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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, October 25, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008

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Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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Tuesday, October 11, 2005

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 54 and 62

[No. LS–02–10]

RIN 0581–AC12

Quality Systems Verification Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is establishing a separate user-fee schedule for the Quality Systems Verification Programs (QSVP) and expanding the scope of the QSVP to include all agricultural products and services within the responsibility of the Livestock and Seed (LS) Program. A new part 62 is established for QSVP services. QVSP are a collection of voluntary, audit-based, user-fee programs authorized under the Agricultural Marketing Act of 1946. QSVP facilitate the global marketing and trade of agricultural products; provide consumers the opportunity to distinguish specific characteristics involved in the production and processing of agricultural products; and ensure that product consistently meets program requirements.

DATES: Effective October 25, 2005.

FOR FURTHER INFORMATION CONTACT: James L. Riva, Chief, Audit, Review, and Compliance (ARC) Branch, telephone 202–720–1124, or e-mail *James.Riva@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Discussion

The Agricultural Marketing Act of 1946 (AMA), as amended, (7 U.S.C. 1621, *et seq.*), gives AMS the authority to provide services so that agricultural products may be marketed to their best advantage, that trade may be facilitated, and that consumers may be able to ascertain characteristics involved in the production and processing of products and obtain the quality of product they desire. AMA also provides for the collection of fees from users of these services that are reasonable and cover the cost of providing services.

The QSVP were developed in 1995 and have since grown to include several value-added marketing programs. The QSVP have grown steadily over the past few years, with auditors conducting 385 assessments in fiscal year (FY) 2001, 562 assessments in FY 2002, and 715 assessments in FY 2003, and 915 assessments in FY 2004. Presently, 14 full-time auditors conduct assessments for the LS Program.

QSVP are voluntary, audit-based, user-fee funded programs developed and conducted at the request of industry and others as a cost-effective alternative to conventional product certification. QSVP use International Organization for Standardization's (ISO) Guidelines and standards as a format for evaluating program documentation to ensure consistent assessment practices and promote international recognition of assessment results.

QSVP user-fees were previously based on the approved hourly rate established for meat grading and certification services provided by the Meat Grading and Certification (MGC) Branch pursuant to 7 CFR part 54. Following the initial program development period, LS Program management conducted a detailed cost analysis of QSVP services and determined that the existing hourly rate established for meat grading and certification services did not sufficiently cover the cost of providing QSVP services. Due to the complexity of planning, performing and interpreting the results of assessments, auditor positions are classified at the GS–11/12 pay grade, in contrast to the GS–5/7/9 pay grade classifications of most MGC Branch full-time positions.

Upon considering all QSVP operational expenses, the LS Program determined that the actual cost of QSVP services, excluding travel costs, to be $108 per hour. LS Program management considered employee salaries and benefits; Agency and LS Program overhead; total revenue hours available to the ARC Branch; and included other anticipated costs such as, federally mandated pay raises through FY 2005, rent, communications, utilities, contractual services, supplies, and equipment in their analysis.

The LS Program considered alternatives to creating a separate user-fee for QSVP services, but found that none were sufficient. Maintaining the same user-fee for QSVP services currently used for conventional meat grading and certification services would not sufficiently cover the cost of providing QSVP services. Another option was to terminate all QSVP services, which would adversely affect producers, businesses, and consumers who desire QSVP services and those entities with already-established programs.

The QSVP were administered through the LS Program's MGC Branch pursuant to 7 CFR part 54 using the user-fee schedule established for meat grading and certification services. In 2001, the administration of QSVP was moved by the LS Program to the Audit, Review, and Compliance (ARC) Branch. This rule establishes a separate user-fee of $108 per hour for QSVP services under a new part 62. Additionally, this rule expands the scope of QSVP services to include all agricultural products or services within the responsibility of the LS Program, such as livestock, meat, meat products, seed, feedstuffs, as well as processes involving the production of these products, agricultural product data storage, product traceability and identification. A new part 62 is established for QSVP services.

Executive Order 12866

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

Executive Order 12988

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

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of this action on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

AMS, through the LS Program's ARC Branch, provides voluntary assessment services to approximately 415 businesses, including 152 livestock slaughterers, 72 meat processors, 46 livestock producers feeders, 135 organic certifying companies, 4 trade associations, and 4 State and Federal entities. Seventy-five percent (*i.e.*, 346) of these businesses are classified as small entities and generate approximately 65 percent of the ARC Branch's revenue. AMS anticipates that many new applicants for QSVP will be classified as small entities. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than $750,000; small agricultural service firms as those whose annual receipts are less than $6 million; and small meat packers as those that have less than 500 employees. No entity, small or large, is obligated to use voluntary QSVP services provided under the authority of AMA.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate to cover the cost of the services provided. The most recent review determined that the hourly rate previously charged by the ARC Branch for QSVP services did not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining a 4-month operating reserve of $275,000. In FY 2004, the ARC Branch incurred a $330,000 operating loss. Losses have depleted the ARC Branch's operating reserve and placed the ARC Branch in an unstable financial position that could adversely affected its ability to provide QSVP services.

While existing automated information management systems for data collection, retrieval, dissemination, applicant billing, and disbursement of employee entitlements, were utilized, the ARC Branch continued to lose revenue due to the cost of providing QSVP services utilizing auditors classified at the GS–11/12 pay grade while charging a user-fee that is based on a lower GS–5/7/9 pay grade classification.

The ARC Branch operating costs increased as a result of higher salaries associated with higher grade employees; congressionally mandated salary increases for all Federal Government employees; ongoing information system technology upgrades necessary to remain compatible with customer and Agency systems; inflation of non-salary operating expenses; and office maintenance expenses. AMS estimates that this action will provide the ARC Branch with an additional $576,000 for FY 2006, offsetting the FY 2005 operating losses of $558,000. This fee increase will help create a 4-month operating reserve as required by AMS.

The new part 62 includes sections on definitions; sections related to providing services, including availability and how to apply for services; and suspension, denial, or cancellation of service and other sections relating to fees. These sections are similar to, or the same as, provisions that currently apply to Quality Systems Verification Programs.

The information collection requirements that appear in this final rule have been approved by OMB and assigned OMB Control Number 0581–0124. Under this rule, applicants are required to submit a cover letter and a complete copy of the applicant's program documentation when a request for service is made. This is a one-time requirement per service request. The QSVP also requires applicants to retain records and documents necessary to support the requested service for the period of at least one calendar year following the year the record was created and long enough to assess conformance of the product though the applicant's quality management system. Additionally, applicants must ensure that such records and documents are readily available and easily accessible.

AMS' estimate for recordkeeping burden reflects the amount of time needed to prepare, store, and maintain documents. Based on its experience with QSVP, AMS understands that applicants develop and maintain complete documentation of their programs as a normal business practice. AMS believes the cost burden associated with submission of complete program documentation to be limited to the time needed for the applicant to review the documentation for completeness and accuracy. AMS estimates this time to average 24 hours per applicant at $20.00 per hour for a total one-time burden per applicant of $480.00. AMS estimates the total one-time burden if 50 applicants applied under this rule to be $24,000.

Based on its experience, AMS also believes that the documents and records required to be retained are normally retained by applicants as part of their normal business practices. However, if record keepers were compensated for their time, AMS estimates that the time required for each applicant to retain these records and documents in a manner required in the rule to average 6 hours per year at $20.00 per hour for a total annual burden of $120.00 per applicant. Assuming that 50 applicants are retained under this rule, the total annual burden is estimated to be $6,000.

Comments concerning small business consideration and the information collection burden or discussed in the next section of this document.

Comments

AMS published a proposed rule in the April 7, 2005, **Federal Register** [66 FR 17611] for public comment. The comment period ended on May 9, 2005. The comment period regarding the information collection requirements that would result from this proposal ended on June 6, 2005. The comments have been posted on AMS' Web site at *http://www.ams.usda.gov/lsg/arc/rule.htm*.

Discussion of Comments

USDA received 3 comments from interested persons, which included two seed trade organizations and one interested party. While one of the seed organizations did not oppose the proposed rule, the second recommended an alternative program that would delegate certification activities to existing organizations. The comment from the interested party opposed the QSVP as a new program that would enhance the federal deficit. The commenters raised a number of concerns including establishing duplicative or conflicting service for the seed industry and questioning the fee analysis itself.

The QSVP is an established program that began providing service in 1995, as a voluntary, user-fee funded program, under the authority of the Agricultural Marketing Act of 1946. As such, expanding the scope of the QSVP to include all agricultural products and services within the responsibility of the LS Program will not enhance the federal deficit. Further, with regard to expanding program service to the seed industry, the QSVP will facilitate the global marketing and trade of not only seeds and seed products, but all agricultural products and services under the LS Program. With regard to the concerns raised about duplicative and conflicting service for the seed industry,

we believe that the QSVP has and will provide a valuable resource for those businesses and industries that wish to use a USDA shield or statement. One commenter noted that some facilities are already ISO certified and that this should be taken into account in the QSVP procedure. To the extent appropriate, ISO certification will be taken into account under QSVP.

One commenter suggested that the QSVP programs be changed to a program that would delegate certification activities to existing organizations. Also, another commenter was concerned about the QSVP adding a layer of complexity in connection with marketing of seed both domestically and internationally. The existing QSVP provides services to primarily the livestock and meat industries. This final rule will provide the same services in the expanded program format, which includes the seed industry. As such, this does not represent a significant program change. Further, individual entities are free to request QSVP services or not, as the program is voluntary.

Concerns were raised about certain aspects of the fee analysis. Two commenters were of the view that the $20.00 per hour used to estimate the costs for the applicant was too low. As part of the Paperwork Reduction Act burden estimate, a $20.00 per hour cost was based upon our experience with QSVP and is reasonable for purposes of information collection burden estimates. The $20.00 cost is separate and distinct from the $108.00 per hour fee. The commenters also noted that the methodology concerning the $108.00 per hour fee is sound, but that non-salary expenses were three times the expense for salaries. The charge of $108.00 per hour reflects the rate necessary to recover the costs of administering the QSVP. AMS considered numerous factors in developing the rate to charge to provide services. AMS and LS Program management considered employee salaries and benefits; Agency and LS Program overhead; total revenue hours available to the ARC Branch; and included other anticipated costs, such as federally mandated pay raises, rent, communications, utilities, contractual services, supplies, and equipment in their analysis.

Finally, one commenter questioned the salaries of the employees used in the program. This commenter also disagreed that the rule will not have a significant economic impact on small companies. AMS estimates that this action will provide an additional $420,000 for FY 2005. Of the $420,000, small businesses would pay an average of $878.00 more per year per applicant. A similar result is expected for new applicants who would be considered small businesses. Further, no entity, small or large, is obligated to use voluntary QSVP services provided under the authority of the AMA. Accordingly, we disagree with this comment.

Another commenter questioned the size of businesses with 5,000 employees, noting that such entities should be considered large businesses. Under Small Business Administration criteria, certain entities with less than 500 employees are considered small businesses.

No changes to the regulation will be made as a result of the comments received. However, AMS will continue to work with the existing trade organizations and their respective industries regarding implementation of this and any future rulemakings.

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The fees should be implemented as soon as possible to avoid further financial losses for the program. Given the current status of this program, our effective date of two weeks after publication in the **Federal Register** is reasonable.

List of Subjects

7 CFR Part 54

Meats, Prepared Meats, and Meat Products.

7 CFR Part 62

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

■ For the reasons set forth in the preamble, chapter 1 of title 7 of the Code of Federal Regulations is amended by amending part 54 and adding part 62 to read as follows:

PART 54—[AMENDED]

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

Authority: 7 U.S.C. 1621–1627.

§ 54.4 [Amended]

■ 2. In § 54.4, paragraph (5) is removed.

■ 3. Part 62 is added to read as follows:

PART 62—LIVESTOCK, MEAT, AND OTHER AGRICULTURAL COMMODITIES (QUALITY SYSTEMS VERIFICATION PROGRAMS)

Subpart A—Quality Systems Verification Programs Definitions

Sec.

Authority: 7 U.S.C. Sec. 1621–1627.

Subpart A—Quality Systems Verification Programs Definitions

§ 62.000 Meaning of terms.

Words used in this subpart in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of such regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Administrator. The Administrator of the Agricultural Marketing Service (AMS), or any officer or employee of AMS to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in the Administrator's stead.

Agricultural Marketing Service. The Agricultural Marketing Service of the U.S. Department of Agriculture.

Applicant. Any individual or business with financial interest in QSVP services who has applied for service under this part.

Assessment. A systematic review of the adequacy of program or system documentation, or the review of the completeness of implementation of a documented program or system.

Auditor. Person authorized by the Livestock and Seed Program to conduct official assessments.

Branch. The Audit, Review, and Compliance Branch of the Livestock and Seed Program.

Chief. The Chief of the ARC Branch, or any officer or employee of the Branch

to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Chief's stead.

Conformance. A user's quality manual and supporting documentation.

Deputy Administrator. The Deputy Administrator of the Livestock and Seed Program, or any officer or employee of the Livestock and Seed Program to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Deputy Administrator's stead.

Financially interested person. Any individual, partnership, corporation, other legal entity, or Government agency having a financial interest in the involved product or service.

Livestock. Bovine, ovine, porcine, caprine, bison or class of Osteichthyes.

Official mark. Official mark or other official identification means any form of mark or other identification, used under the regulations to show the conformance of products with applicable program requirements, or to maintain the identity of products for which service is provided under the regulations.

Official memoranda or assessment reports. Official memorandum means any assessment report of initial or final record of findings made by an authorized person of services performed pursuant to the regulations.

Products. Includes all agricultural commodities and services within the scope of the Livestock and Seed Program This includes livestock, meat, meat products, seed, feedstuffs, as well as processes involving the production of these products, agricultural product data storage, product traceability and identification.

QSVP Procedures. Audit rules and guidelines set forth by the Agricultural Marketing Service regarding the development, documentation, and implementation of QSVP.

Quality Manual. A collection of documents that describe the applicant's quality management system, as it applies to the requested service.

Quality Systems Verification Programs (QSVP). A collection of voluntary, audit-based, user-fee programs that allow applicants to have program documentation and program processes assessed by AMS auditor(s) and other USDA officials under this part.

Regulations. The regulations in this part.

USDA. The U.S. Department of Agriculture.

Administration

§ 62.100 Administrator.

The LS Program Deputy Administrator is charged with the administration of official assessments conducted according to the regulations in this part and approved LS Program QSVP procedures.

Service

§ 62.200 Services.

QSVP, under this regulation, provide applicants, the ability to have USDA assess documented processes or systems.

(a) Assessment services provided under the regulations shall consist of:

(1) A review of the adequacy of an applicant's quality manual against LS Program QSVP procedures, internationally recognized guidelines, or other requirements as approved by the LS Program;

(2) An onsite assessment of the applicant's program to ensure implementation of provisions within the quality manual and the applicant's conformance with applicable program requirements and LS Program QSVP procedures; and

(3) A reassessment of the applicant's program to ensure continued implementation of provisions within the quality manual and the applicant's conformance with program requirements and applicable LS Program QSVP procedures;

(b) Developmental assistance in the form of training to explain LS Program QSVP procedures is available upon request.

§ 62.201 Availability of service.

QSVP services under these regulations are available to international and domestic government agencies, private agricultural businesses and any finically interested person.

§ 62.202 How to apply for service.

Applicants may apply for QSVP services by submitting the following information to the ARC Branch headquarters office at USDA, AMS, LSP, ARC Branch, 1400 Independence Avenue, SW., STOP 0294, Room 2627-S, Washington, DC 20250–0294; by fax to: (202) 690–1038, or e-mail to: *ARCBranch@usda.gov.*

(a) The original completed form LS–313, Application for Service;

(b) A letter requesting QSVP services; and

(c) A complete copy of the applicant's program documentation, as described in the LS Program QSVP procedures.

§ 62.203 How to withdraw service.

Service may be withdrawn by the applicant at any time; provided that, the applicant notifies the ARC Branch in writing of his/her desire to withdraw the application for service and pays any expenses the Department has incurred in connection with such application.

§ 62.204 Authority to request service.

Any person requesting service may be required to prove his/her financial interest in the product or service at the discretion of the Deputy Administrator.

§ 62.205 Conflict of interest.

No USDA official shall review any program documentation or determine conformance of any documented process or system in which the USDA official has financial holdings.

§ 62.206 Access to program documents and activities.

(a) The applicant shall make its products and program documentation available and easily accessible for assessment, with respect to the requested service. Auditors and other USDA officials responsible for maintaining uniformity and accuracy of service under the regulations shall have access to all parts of facilities covered by approved applications for service under the regulations, during normal business hours or during periods of production, for the purpose of evaluating products or processes. This includes products in facilities which have been or are to be examined for program conformance or which bear any official marks of conformance. This further includes any facilities or operation that is part of an approved program.

(b) Documentation and records relating to an applicant's program must be retained for at least one calendar year following the calendar year during which the record was created.

§ 62.207 Official assessment.

Official assessment of an applicant's program shall include:

(a) *Documentation assessment.* Auditors and other USDA officials shall review the applicant's program documentation and issue finding of the review to the applicant.

(b) *Program assessment.* Auditors and USDA officials shall conduct an onsite assessment of the applicant's program to ensure provisions of the applicant's program documentation have been implemented and conform to LS Program QSVP procedures.

(c) *Program Determination.* Applicant's determined to meet or not meet LS Program QSVP procedures or

the applicant's program requirements shall be notified of their program's approval or disapproval.

(d) *Corrective and/or preventative actions.* Applicants may be required to implement corrective and/or preventative actions upon completion of assessment. After implementation of corrective and/or preventative actions, the applicant may request another assessment.

§ 62.208 Publication of QSVP assessment status.

Approved programs shall be posted for public reference on the ARC Branch Web site: *http://www.ams.usda.gov/lsg/arc/audit.htm.* Such postings shall include:

(a) Program name and contact information,

(b) Products or services covered under the scope of approval,

(c) Effective dates of approval, and

(d) Control numbers of official assessments, as appropriate, and

(e) Any other information deemed necessary by the Branch Chief.

§ 62.209 Reassessment.

Approved programs are subject to periodic reassessments to ensure ongoing conformance with the LS Program QSVP procedures covered under the scope of approval. The frequency of reassessments shall be based on the LS Program QSVP procedures, or as determined by the Deputy Administrator.

§ 62.210 Denial, suspension, or cancellation of service.

(a) QSVP services may be denied if an applicant fails to meet its program requirements, or conform to LS Program QSVP procedures, such as:

(1) Adequately address any program requirement resulting in a major non-conformance or an accumulation of minor non-conformances that result in the assignment of a major non-conformance for the program.

(2) Demonstrate capability to meet any program requirement resulting in a major non-conformance.

(3) Present truthful and accurate information to any auditor or other USDA official; or

(4) Allow access to facilities and records within the scope of the program.

(b) QSVP services may be suspended if the applicant fails to meet its program requirements, or conform to LS Program QSVP procedures; such as failure to:

(1) Adequately address any program requirement resulting in a major non-conformance;

(2) Demonstrate capability to meet any program requirement resulting in a major non-conformance;

(3) Follow and maintain it's approved program or QSVP procedures;

(4) Provide corrective actions and correction as applicable in the timeframe specified;

(5) Submit significant changes to and seek approval from the Chief prior to implementation of significant changes to an approved program;

(6) Allow access to facilities and records within the scope of the approved program;

(7) Accurately represent the eligibility of agricultural products or services distributed under an approved program;

(8) Remit payment for QSVP services;

(9) Abstain from any fraudulent or deceptive practice in connection with any application or request for service under the rule; or

(10) Allow any auditor or other USDA official to perform their duties under the regulations of this part.

(c) QSVP services maybe be cancelled, an application may be rejected, or program assessment may be terminated if the Deputy Administrator or his designee determines that a nonconformance has remained uncorrected beyond a reasonable amount of time.

§ 62.211 Appeals.

Appeals of adverse decisions under this part, may be made in writing to the Livestock and Seed Program Deputy Administrator at STOP 0249, Room 2092-South, 1400 Independence Avenue, SW., Washington, D.C. 20250–0249. Appeals must be made within 30 days of receipt of adverse decision.

(a) *Procedure for Appeals.* Actions under this subparagraph concerning decision of appeals of the Deputy Administrator shall be conducted in accordance with the Rule of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth at 7 CFR § 1.130 through § 1.151 and the Supplemental Rules of Practice in 7 CFR part 50.

(b) [Reserved]

§ 62.212 Official assessment reports.

Official QSVP assessment reports shall be generated by the auditor at the conclusion of each assessment and a copy shall be provided to the applicant.

§ 62.213 Official identification.

The following, as shown in figure 1, constitutes official identification to show product or services produced under an approved USDA, Process Verified Program (PVP):

Figure 1.

(a) Products or services produced under an approved USDA, PVP may use the "USDA Process Verified" statement and the "USDA Process Verified" shield, so long as, both the statement and shield are used in direct association with a clear description of the process verified points that have been approved by the Branch.

(b) Use of the "USDA Process Verified" statement and the "USDA Process Verified" shield shall be approved in writing by Chief prior to use by an applicant.

Charges for Service

§ 62.300 Fees and other costs for service.

Fees and other charges will be levied based on the following provisions:

(a) *Fees for service.* Fees for QSVP services shall be based on the time required to provide service calculated to the nearest quarter hour period, including, but not limited to, official assessment time, travel time, and time required to prepare assessment reports. The hourly fee rate shall be $108 per hour.

(b) *Transportation costs.* Applicants are responsible for paying actual travel costs incurred to provide QSVP services including but not limited to: Mileage charges for use of privately owned vehicles, rental vehicles and gas, parking, tolls, and public transportation costs such as airfare, train, and taxi service.

(c) *Per diem costs.* The applicant is responsible for paying per diem costs incurred to provide QSVP services away from the auditor's or USDA officials' official duty station(s). Per diem costs shall be calculated in accordance with existing travel regulations (41 CFR, subtitle F—Federal Travel Regulation System, chapter 301).

(d) *Other costs.* When costs, other than those costs specified in paragraphs (a), (b), and (c) of this section, are involved in providing the QSVP services, the applicant shall be responsible for these costs. The amount of these costs shall be determined administratively by the Chief. However, the applicant will be notified of these costs before the service is rendered.

§ 62.301 Payment of fees and other charges.

Fees and other charges for QSVP services shall be paid in accordance with the following provisions. Upon receipt of billing for fees and other charges, the applicant shall remit payment within 10 business days by check, electronic funds transfer, draft, or money order made payable to USDA, AMS, in accordance with directions on the billing. Fees and charges shall be paid in advance if required by the auditor or other authorized USDA official.

Miscellaneous

OMB Control Number

§ 62.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0124.

Dated: October 4, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20310 Filed 10–7–05; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN 3245–AF31

HUBZone Program; Corrections

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Correcting amendments.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting an improper citation within the interim rule that appeared in the **Federal Register** on August 30, 2005, which amends SBA's HUBZone program regulations.

DATES: Effective October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Associate Administrator, HUBZone Program, at (202) 205–6731 or by e-mail at: *michael.mchale@sba.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2005, at 79 FR 51243, the SBA published an interim final rule amending SBA's HUBZone, 8(a) Business Development, Government Contracting and Size Standard regulations. This rule implemented provisions of the Small Business Act including the Consolidated Appropriations Act, 2005, specifically, Subtitle E of Division K entitled the Small Business Reauthorization and Manufacturing Assistance Act of 2004.

Need for Correction

Since publication, SBA has discovered that this interim rule inadvertently stated SBA's intent to revise § 126.306 (found at 70 FR 51250) when it should have cited specifically to § 126.306(a). SBA intended to revise only subsection (a) leaving the other subsections unchanged.

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Small businesses.

■ Accordingly, 13 CFR part 126 is corrected by making the following correcting amendments:

PART 126—HUBZONE PROGRAM

■ 1. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

■ 2. Revise the first and last sentences of § 126.306(a) as follows:

§ 126.306 How will SBA process this certification?

(a) The AA/HUB or designee is authorized to approve or decline certifications. * * * The decision of the AA/HUB or designee is the final agency decision.

* * * * *

Dated: September 30, 2005.

Allegra McCullough,

Associate Deputy Administrator/Office of Government Contracting and Business Development.

[FR Doc. 05–20188 Filed 10–7–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 2004N–0289]
RIN 0910–AF34

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for Over-the-Counter Nasal Decongestant Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the final monograph (FM) for over-the-counter (OTC) nasal decongestant drug products (drug products used to relieve nasal congestion due to a cold, hay fever, or other upper respiratory allergies) to remove the indication "for the temporary relief of nasal congestion associated with sinusitis" and to prohibit use of the terms "sinusitis" and "associated with sinusitis" elsewhere on the labeling. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: *Effective Date*: This regulation is effective April 11, 2007.

Compliance Dates: The compliance date for products with annual sales less than $25,000 is October 11, 2007. The compliance date for all other products is April 11, 2007.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 2, 2004 (69 FR 46119), FDA published a proposed rule to amend the FM for OTC nasal decongestant drug products to remove the indication "for the temporary relief of nasal congestion associated with sinusitis" and to prohibit use of the terms "sinusitis" and "associated with sinusitis" elsewhere on the labeling. Recent publications (Refs. 1 and 2) indicate that prospective studies on the role of nasal decongestants in the treatment of sinusitis are lacking, and the data on their use as an adjunct in the treatment of sinusitis are limited and controversial. Despite the lack of evidence for their use, nasal decongestants are recommended or prescribed by health care providers as adjunctive therapy for sinusitis. This treatment occurs within a physician-patient relationship and should not be construed as evidence that consumers should self-diagnose and self-manage sinusitis. In addition, there is preclinical evidence that topical nasal decongestants may have a negative effect on the resolution of sinusitis, as they may increase the degree of sinus inflammation (Ref. 3). Due to the current labeling, FDA is concerned that consumers use OTC nasal decongestant drug products (both oral and topical) to treat symptoms associated with

sinusitis, rather than seeking medical evaluation and definitive treatment. The delay in medical evaluation could also result in a lost opportunity for early diagnosis of another serious medical condition in consumers who have symptoms similar to those of sinusitis. Consumers who have bacterial sinusitis could potentially have their condition worsen by delaying treatment with appropriate antibiotic medications, possibly resulting in serious complications. Consumers who have both sinusitis and accompanying asthma could have complications from both diseases if there is a delay in appropriate evaluation and treatment of their asthma. Due to the data contained in recent publications and the potential medical harms described in this section of this document, FDA now considers the indication "for the temporary relief of nasal congestion associated with sinusitis" inappropriate and potentially misleading in the labeled uses for OTC nasal decongestant drug products. Consumers could interpret this indication to mean that the product can be used for self-treating sinusitis. Likewise, use of the term "sinusitis" on the product's principal display panel could cause the same misunderstanding. FDA received three comments on its proposed rule.

II. FDA's Response to the Comments

(Comment 1) One comment disagreed with the proposed rule and contended that FDA should be compelled to provide valid scientific data prior to taking the action noted in the proposed rule. The comment stated that:

- Consumers are not likely to misunderstand symptom treatment to also mean disease treatment.
- Consumers would know that they have sinusitis only after intervention by a physician.
- Consumers with recurrent sinusitis may be able to recognize the signs and be able to begin to treat the nasal congestion with an OTC nasal decongestant as they seek medical intervention.
- Consumers may be unaware that they have sinusitis and treat the associated nasal congestion with a nasal decongestant drug product, thereby allowing the sinusitis to progress in some cases.
- Because OTC nasal decongestant drug product labeling warns consumers to stop taking the medication and consult a doctor if their symptoms do not improve within 7 days or if the symptoms are accompanied by fever, consumers who follow that labeling would discontinue use of the product if they experienced fever (a symptom associated with a bacterial infection in sinusitis) or if the condition lasted more than 7 days.
- If the proposed rule is finalized, there will be no OTC labeled product that can be used for sinusitis, leaving consumers only with the option of medical intervention to begin treatment of their symptoms. This option will lead to a greater demand for antibiotics, including for episodes where not necessarily needed, which will lead to worsening of the public health due to antibiotic resistance.
- FDA has not produced data to show that α-adrenergic decongestants are not appropriate for relief of nasal congestion associated with sinusitis.
- Current consumer-oriented medical information continues to note that nasal decongestants are recommended by physicians for nasal congestion associated with sinusitis. As examples, the comment cited the following information:
  1. The American Academy of Otolaryngology-Head and Neck Surgery (AAOHNS) notes that oral and topical nasal decongestants may be used to alleviate nasal congestion associated with sinusitis.
  2. The National Institute of Allergy and Infectious Diseases (NIAID) (National Institutes of Health, U.S. Department of Health and Human Services) notes that physicians may recommend decongestants to reduce congestion.
  3. The American Academy of Allergy, Asthma & Immunology (AAAAI) notes that in addition to prescribing an antibiotic to control the bacterial infection, physicians may prescribe a decongestant to reduce blockage.
- The current labeling for these products does not delay consumers from seeking appropriate treatment for sinusitis.

(Comments 2 and 3) A second comment from the AAAAI agreed with FDA's proposal to delete reference to sinusitis in the labeling of OTC nasal decongestant drug products and stated that the proposal is reasonable, appropriate, and a step in the right direction. A third comment, from a consumer, fully agreed with removal of "sinusitis" from the product labeling. The person who submitted the comment considered himself to be an average consumer of OTC drug products who contracts sinusitis at least twice a year and stated that:

- The main argument in support of the proposal is evidence that these drugs are lacking when they are recommended or prescribed for adjunctive therapy for sinusitis.
- Evidence suggests that OTC drugs may have negative effects on the treatment of sinusitis and can worsen the condition.
- Such labeling is almost a form of false advertising, that the indications are misleading, and that consumers should not be led to believe such labeling is acceptable.
- If consumers use OTC drugs to self-treat sinusitis and the condition is not properly treated, the condition could worsen dramatically, with consumers having the risk of becoming clinically worse and/or developing further complications.
- FDA is correct in its removal of the "sinusitis" language to ensure that the probability of consumers using OTC drugs for self-treatment of sinusitis will be reduced.

FDA disagrees with the comment opposing the proposed rule. FDA initially affirmed the recommendation by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products in its advance notice of proposed rulemaking (48 FR 38312, September 9, 1976) to include the "sinusitis" term in OTC nasal decongestant drug product labeling. However, due to the data in recent publications and the potential harms described in this document, FDA no longer considers sinusitis an appropriate OTC indication and believes that the current labeling is potentially misleading to consumers. Appropriate care of sinusitis requires the attention of a health care practitioner. FDA is concerned that consumers may interpret current product labeling as implying that a nasal decongestant can treat sinusitis and will delay consulting a physician for treatment.

The comment that disagreed with the proposed rule referred to current consumer-oriented information. The comment stated that this information continues to note that nasal decongestants are recommended by physicians for nasal congestion associated with sinusitis. For example,

- NIAID notes that physicians may recommend decongestants to reduce congestion.
- AAAAI notes that physicians may prescribe a medication such as a decongestant to reduce blockage in addition to prescribing an antibiotic to control the bacterial infection.

These references clearly indicate that use of decongestants and/or adjunct therapy is at the discretion of a physician. It should also be noted that AAAAI submitted a comment agreeing with FDA's proposal.

The comment that disagreed with the proposed rule implies that a consumer who uses an OTC nasal decongestant drug product will not delay seeking medical attention for sinusitis because the OTC nasal decongestant drug product labeling warns consumers to consult a doctor if their symptoms do not improve within 7 days or are accompanied by fever. However, the presence of fever in consumers with sinusitis is variable (Ref. 2), and decongestant products may be combined with an analgesic that can mask these symptoms. No data were submitted to support the contention that consumers are not likely to misunderstand symptom treatment to also mean disease treatment. Neither were data submitted to support the contention that current labeling does not delay consumers from seeking appropriate treatment for sinusitis. FDA agrees with comments that state that diagnosis and definitive treatment of sinusitis requires intervention by a physician, and that consumers who are unaware that they have sinusitis may allow the condition to progress. Although FDA is not aware of data supporting the use of α-adrenergic decongestants in sinusitis, FDA recognizes that physicians may advocate their use. This advocacy does not, however, make sinusitis an OTC indication. FDA concludes that the term "sinusitis" should be removed from OTC nasal decongestant drug product labeling.

III. FDA's Final Conclusions

FDA is finalizing its proposal by removing § 341.80(b)(1)(iii) (21 CFR 341.80(b)(1)(iii)) from the FM for OTC nasal decongestant drug products. FDA is also including "sinusitis" and "associated with sinusitis" as nonmonograph conditions in new § 310.545(a)(6)(ii)(C) (21 CFR 310.545(a)(6)(ii)(C)).

In addition, FDA is entering technical changes by substituting "nasal congestion" for "sinusitis" in the paragraph headings of §§ 341.85(b)(2) and (b)(3) (21 CFR 341.85(b)(2) and (b)(3)), and by removing the term "and/or (b)(1)(iii)" from § 341.85(b)(2)(ii).

Twenty-four months after the date of publication in the **Federal Register**, for products with sales less than $25,000, and 18 months after the date of publication in the **Federal Register**, for all other products, no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of a new drug application (NDA) or abbreviated new drug application (ANDA). Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the compliance dates of the final rule must be in compliance with the FM regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

IV. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year."

FDA believes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed later in this section of the document, FDA concludes that the rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product.

The purpose of this final rule is to remove a labeling claim for OTC nasal decongestant drug products. Removal of this claim should reduce possible misuse and improve consumers' self-use of these products. FDA does not anticipate that removal of this claim will significantly affect OTC sales of these products.

The final rule requires relabeling of some OTC nasal decongestant drug products, i.e., those products that currently have a claim for sinusitis in their labeling. FDA's drug listing system identifies about 1,121 manufacturers and 381 marketers of approximately 1,960 stockkeeping units (SKUs) (individual products, packages, and sizes) of OTC nasal decongestant drug products. These numbers include some products marketed under an NDA or ANDA. In addition, there may be a few additional marketers and products that are not identified in the sources FDA reviewed. FDA is using 2,000 SKUs as an approximate number of products in the marketplace that would be affected by this final rule.

FDA randomly reviewed the labeling of some of these nasal decongestant drug products and found that 74 of 100 products did not have a sinusitis claim. Extrapolating these numbers to approximately 2,000 SKUs of these products, FDA estimates that approximately 520 products (26 percent) would have to be relabeled. FDA estimates (based on information provided by OTC drug manufacturers) that the final rule would impose total one-time compliance costs on industry for relabeling of about $3,000 to $4,000 per SKU, for a total cost for 520 SKUs of $1,560,000 to $2,080,000.

FDA believes the actual cost could be lower for several reasons. First, as FDA explained in the final rule for OTC drug product labeling requirements (64 FR 13254 at 13280, March 17, 1999), most of the labeling changes will be made by private label small manufacturers that tend to use simpler and less expensive labeling. Second, FDA is allowing a period of 18 months (24 months for products with annual sales less than $25,000) after publication of a final rule for manufacturers to implement the new labeling. Thus, manufacturers should be able to use up existing labeling stocks and to make the labeling changes in the normal course of business. Further, manufacturers will not incur any expenses determining how to state the product's labeling because the final rule provides that information. The final rule does not require any new reporting and recordkeeping activities. Therefore, no additional professional skills would be needed.

FDA considered, but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While FDA believes that consumers would benefit from having this new labeling in place as soon as possible, FDA also acknowledges that a shorter implementation period could significantly increase the compliance costs and these costs could be passed through to consumers. A longer time period would unnecessarily delay the benefit of new labeling to consumers who self-medicate with these drug products. FDA rejects an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, a longer compliance date (24 months) is being provided for products with annual sales less than $25,000.

OTC nasal decongestant drug products are not the sole products produced by manufacturers affected by this rule. FDA believes the incremental costs of this rule will be less than 1 percent of any manufacturer's total sales. Thus, this economic analysis, together with other relevant sections of this document, serves as FDA's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirement in this document is not subject to review by the Office of Management and Budget because it does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the removal of a labeling claim is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, FDA concludes that the rule does not contain policies that have federalism implications as defined in the Executive order, and consequently, a federalism summary impact statement is not required.

VIII. References

The following references are on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Parameters for the Diagnosis and Management of Sinusitis, supplement to *The Journal of Allergy and Clinical Immunology*, 102 (6 Part 2): S107–S144, December 1998.

2. American Academy of Pediatrics Subcommittee on Management of Sinusitis and Committee on Quality Improvement, "Clinical Practice Guideline: Management of Sinusitis," *Pediatrics*, 108(3): 798–808, 2001.

3. "Report of the Rhinosinusitis Task Force Committee Meeting," *Otolaryngology-Head and Neck Surgery*, 117 (3 Part 2): S1–S68, 1997.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310 and 341 are amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by adding paragraph (a)(6)(ii)(C) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(ii) * * *

(C) Approved as of April 11, 2007; October 11, 2007, for products with annual sales less than $25,000. Any ingredient(s) labeled with claims or directions for use for sinusitis or for relief of nasal congestion associated with sinusitis.

* * * * *

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 4. Section 341.80 is amended by removing paragraph (b)(1)(iii),

■ 5. Section 341.85 is amended by revising the headings in paragraphs (b)(2) and (b)(3) and by revising paragraph (b)(2)(ii) to read as follows:

§ 341.85 Labeling of permitted combinations of active ingredients.

* * * * *

(b)(2) *For permitted combinations containing an analgesic-antipyretic active ingredient identified in § 341.40(a), (c), (f), (g), (m), (q), and (r) when labeled for relief of hay fever/allergic rhinitis and/or nasal congestion symptoms.*

* * * * *

(ii) The indication(s) for the cough-cold ingredient(s) consists of the labeling for antihistamines in § 341.72(b)(1) or (b)(2) and/or nasal decongestants in § 341.80(b)(1)(ii), as appropriate, and the labeling for any other cough-cold combination. This labeling may follow a separate bullet(s) or may be combined with the indication in paragraph (b)(2)(i) of this section.

(b)(3) *For permitted combinations containing an oral analgesic-antipyretic active ingredient identified in § 341.40(a), (c), (f), (g), (m), (q), and (r) when labeled for relief of general cough-cold symptoms and/or the common cold and for relief of hay fever/allergic rhinitis and/or nasal congestion symptoms.*

* * * * *

Dated: September 26, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20304 Filed 10–7–05; 8:45 am]

BILLING CODE 4160–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

Micrographic Records Management

CFR Correction

In Title 36 of the Code of Federal Regulations, Part 300 to End, revised as of July 1, 2005, on page 889, § 1230.1 is corrected by removing the last sentence of the first paragraph, the following undesignated paragraph, and paragraphs (a), (b), and (c).

[FR Doc. C5–55514 Filed 10–7–05; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–1–7685; FRL–7982–1]

Approval and Promulgation of Implementation Plans; Texas; Speed Limits Local Measure for the Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision for the State of Texas to reduce some speed limits in the Dallas/Fort Worth (DFW) ozone nonattainment area. This measure reduces speed limits in a nine county area from 70 miles per hour to 65 miles per hour and from 65 miles per hour to 60 miles per hour. This measure was submitted on April 25, 2000, and EPA proposed approval on January 28, 2001. These speed limit reductions are designed to reduce nitrogen oxides in the DFW area as part of a strategy to aid the area in attaining of the National Ambient Air Quality Standards.

The EPA is also making a technical correction to ensure that it is clear that the measure applies to a nine county area.

DATES: This rule is effective on November 10, 2005.

ADDRESSES: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7237; fax number 214–665–7263; e-mail address *sherrow.herb@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?

EPA is approving the speed limit local measure for the DFW ozone nonattainment area submitted on April 25, 2000.

II. What Is the Background for This Action?

We proposed approval of this SIP element on January 28, 2001.

The Texas Department of Transportation (TxDOT) revised regulations relating to speed limits to allow the Texas Commission on Environmental Quality (TCEQ) to submit a request to change speed limits for environmental reasons when justified. (Please see adopted rules, 25 TexReg 5686, June 9, 2000; and proposed rules, 25 TexReg 2018, March 10, 2000). Consequently, TxDOT lowered all 70 mile per hour (mph) speed limits to 65 mph, and all 65 mph speed limits to 60 mph in the DFW nine county area (Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, and Rockwall Counties). These slower speeds are anticipated to reduce the emissions of NO_X and improve air quality. The slower speed limits were implemented September 1, 2001. This approval will add a new local measure to the SIP for the DFW ozone nonattainment area. Since the slower speeds are anticipated to reduce NO_X emissions, this local measure will not cause an increase in the criteria pollutants or their precursors. As such, the State's revision meets and complies with the requirements of section 110(l) of the Clean Air Act.

Please refer to 66 FR 4756, January 18, 2001, and its Technical Support Document for details on the speed limit measure.

III. What Technical Correction Are We Making?

We incorrectly stated that the speed limits would apply to the four county DFW area instead of the nine county area in the Speed Limits Reduction section of our proposed rule (see 66 FR 4756, page 4760) and in the Technical Support Document (TSD) page 35. In other references in the Emissions Control Strategy, Local Measures section (66 FR 4756, page 4760; TSD page 32) and the What are the Local Initiatives and are They Approvable? section (66 FR 4756, page 4760; TSD, page 35) we correctly stated that the measure applies to the nine county area. The purpose of this technical correction is to ensure that it is clear that the measure applies to the nine county area.

IV. What Comments Were Received During the Public Comment Period, January 18, 2001, to March 19, 2001?

Three commentors stated that speed limit reductions was not a measure which was effective or a reasonable approach to clean air.

Response: We disagree with the comment. Computer modeling used by the TCEQ to assess the effectiveness of control strategies to improve air quality in the DFW area showed that speed limit reductions would result in substantial emissions reductions in the DFW area. The technical analysis submitted showed a reduction of over 5 tons per day of Nitrogen Oxides and ½ ton per day of volatile organic compounds. In addition, the measure would result in reducing the severity of traffic accidents and in fuel savings.

Two commentors stated that the speed limits would not be effective without additional enforcement. One commentor asked if there was funding available for additional police officers to enforce the new speed limits.

Response: We agree that the reduced speed limits should be adequately enforced. The speed limit reduction measure will be enforced through State and Local speed limit enforcement regulations and practices. The TCEQ has committed to working with other State and Local agencies to ensure adequate enforcement and funding for enforcement of this measure. We realize that not all drivers comply with speed limits and the emissions reductions associated with the measure have been developed accordingly.

V. Final Action

EPA is approving the speed limit local measure for the DFW nine county area (Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, and Rockwall Counties) submitted on April 25, 2000.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 21, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures" is amended by adding one new entry to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comments
* * * * * * *				
Approval of the Speed Limits Local Initiative Measure in the DFW nine county area. Affected counties are Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, Rockwall.	Dallas-Fort Worth	4/25/2000	10/11/2005 ..... [Insert *FR* page number where document begins].	

[FR Doc. 05–20337 Filed 10–7–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 252, and Appendix F to Chapter 2

[DFARS Case 2003–D009]

Defense Federal Acquisition Regulation Supplement; Payment and Billing Instructions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to improve payment and billing instructions in DoD contracts. This final rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Effective October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2003–D009.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm*.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

○ Deletion of text at DFARS 204.201, 204.202, 204.7103–2, 204.7104–2, 204.7107, and 204.7108 addressing distribution of contracts and modifications; numbering of contract line items, subline items, and accounting classification references; and inclusion of payment instructions in contracts. Text on these subjects has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi*. In addition, the related PGI text contains a menu of standard payment instructions from which the contracting officer will make a selection for inclusion in Section G of the contract.

○ Clarification of the definition of "accounting classification reference number" at DFARS 204.7101.

○ Amendment of DFARS 204.7103–1 to add text addressing contract type in the establishment of contract line items.

○ Amendment of DFARS 204.7106 to clarify that contract modifications decreasing the amount obligated shall not be issued unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the Government.

○ Addition of a clause addressing contract line item information needed in contractor payment requests.

○ Amendment of Material Inspection and Receiving Report instructions to address electronic submissions.

DoD published a proposed rule at 69 FR 35564 on June 25, 2004. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below:

1. *Comment:* The proposed text at DFARS 204.7103–1 should include labor-hour and/or time-and-materials line items.

DoD Response: Concur. DFARS 204.7103–1 has been expanded to include time-and-materials/labor-hour line items to ensure that proper payment is applied to each line item. Since a time-and-materials/labor-hour contract contains some elements of a fixed-price contract and some elements of a cost-reimbursement contract, specifying time-and-materials/labor-hour line items will avoid potential confusion as to whether these are classified as fixed-price or cost-reimbursement.

2. *Comment:* The proposed text at DFARS 204.7103–1 conflicts with the current text at DFARS 215.204–2(g). Recommend that the text at 215.204–2(g) be deleted or revised to be consistent with the proposed text at 204.7103–1.

DoD Response: Concur. The final rule deletes the text at DFARS 215.204–2(g).

3. *Comment:* Delete the proposed text at DFARS 204.7106(b)(3)(i) and (ii) concerning modification coordination and funding, because they are supplementing the wrong part. Per DFARS 204.7100, the scope of this subpart is to prescribe policies and procedures for assigning contract line item numbers. Further, it is recommended that the language not be included at all in the DFARS, because the text proposed at DFARS 204.7106(b)(3)(i) increases the administrative burden on contracting officers by imposing coordination between the administrative contracting officer (ACO) and the procuring contracting officer (PCO) regardless of the authority already granted in the regulations (FAR 1.602–1; 42.302(a)), and any contracting officer may gain additional information through coordination with other offices or research on the numerous data bases (MOCAS, NAFI, EDA). Additionally, DFARS 204.7106(b)(3)(ii) reiterates the requirement for the contracting officer to ensure that sufficient funds are available before executing any contractual action (FAR 1.602–2(a), 32.703, 43.105(a)) and the processes in

FAR Subpart 32.6 concerning contract debt and recovered monies owed to the Government.

DoD Response: Do not concur. DoD believes it is important that both the PCO and the ACO are aware when the amount obligated will be decreased, since they both play integral roles in the contracting process. In some cases, the PCO may be planning to decrease an obligation on a contract line item, but the ACO may be aware that the items have been or are in the process of being delivered under that contract line item. Furthermore, negative obligations should only exist if the Government is owed monies, i.e., by recouping those monies the negative obligation will be eliminated.

4. *Comment:* The wording of proposed DFARS 204.7109 would require the contracting officer to do a good deal of research and interpretation to apply correctly. Recommend simplification of the language at 204.7109 to achieve the same objective with clearer, more easily applied criteria as follows:

"Use the clause at 252.204–7XXX, Billing Instructions, if:

(a) The application of the payment instructions in Section G of the contract necessitates that the applicable contract line item numbers be identified on the contractor's payment request, and

(b) The contract does not otherwise require that either the payment request or the receiving report contain the applicable contract line item number (e.g., contract financing payments, public vouchers)."

DoD Response: Do not concur. DoD believes that, if the Government will require the contractor to bill at the contract line item level, there should be a contract clause that specifically delineates this requirement. Furthermore, any requirement for the payment request to contain the applicable line item number should be in Section G of the contract. Adopting the respondent's recommended language would imply that all payment instructions do not have to be included in Section G of the contract, which is contrary to the intent of this rule.

5. *Comment:* The proposed text at DFARS 204.7109 requires contractors to identify the applicable contract line items when submitting requests for contract financing and interim payments under cost-reimbursement contracts for services. It is cost-prohibitive and, in some cases, impossible for contractors to track and bill progress payments based on costs at the contract line item level. It is believed that the authors of the payment and billing instructions addressed in the proposed PGI text recognized this problem, because the text proposed at PGI 204.7108(c)(4) provides that, for contracts that provide for progress payments based on costs, the contracting officer shall instruct the payment office to use paragraph (d)(11) instructions in accounting for the payment. Paragraph (d)(11) requires the payment office to make payment from each accounting classification reference number (ACRN) within the contract in the same proportion as the amount of funding unliquidated for each ACRN. If the payment office is directed to prorate payments, there is no reason for the contractor, in submitting progress billings, to break out payment requests by contract line item. Recommend that the reference in DFARS 204.7109(a), regarding the submission of a payment request for a contract financing payment, exclude payments on contracts that require progress payments based on costs. In addition, recommend revision of the proposed text at DFARS 204.7109 to exclude all cost-type contracts, that are funded by a single appropriation, from the requirement to separately identify a payment amount for each contract line item included in the payment request. If contracts contain only one appropriation, there is no need to require contractors to bill at the line item level, regardless of the number of ACRNs that have been assigned to the contract.

DoD Response: Concur in part. DoD recognizes the respondent's concern that including a requirement for billing at the contract line item level may not be appropriate for certain fixed-price or cost-type contracts. However, the respondent's recommended solution will not address this concern. Eliminating the requirement for a contract clause would not preclude a contracting officer from requiring a contractor to bill at the contract line item level for a particular contract. As previously noted, DoD believes that, if the Government requires the contractor to bill at the contract line item level, there should be a contract clause that specifically delineates this requirement.

DoD believes the respondent has a valid concern regarding the circumstances under which billing at the contract line item level is required. When a contract uses standard payment options (d)(7) through (11) for a particular contract type, there is no need for the contractor to identify the contract line item for that particular contract type, since the allocations will be done on a contract-wide basis. However, the contractor will need to identify the contract line item on the payment request when the contract, for a particular contract type, uses standard payment options (d)(1) through (6) of PGI 204.7108, or requires contractor identification of the contract line item on the payment request through use of payment instruction (d)(12) of PGI 204.7108. The final rule reflects this requirement.

It is also important to note that a contractor should not be required to identify costs at the contract line item level if the contractor is simply going to use an allocation to identify such costs. In those cases where the contractor would simply be allocating the costs to obtain the contract line item billing, the contracting officer should select one of options (d)(7) through (11) (allocation at the contract level). This is preferable to the contractor allocating the costs to the contract line item level and having the payment office do a second allocation to the ACRN level.

DoD also believes that a contractor should not be required to bill costs at the contract line item level unless there are significant benefits to the Government. Thus, the final PGI text has been revised to require contractor billing at the contract line item level only when the contracting officer documents in the contract file that such a requirement provides significant benefits to the Government.

6. *Comment:* The proposed rule will have a significant impact on large and small contractors. The requirement proposed at DFARS 252.204–7XXX(a) for the specific identification of billing amounts by contract line item to "best reflect" costs will make it necessary for contractors to establish new systems and processes to provide more detailed reporting than that which is currently necessary on interim billings and financing submissions. Further, the lack of a definition for the term "best reflect contract work performance" will lead to the establishment of unattainable compliance requirements arising from inconsistent interpretations by different contracting and audit offices. This term will be inconsistently interpreted by contractors, contracting officers, payment officials, and DCAA auditors who evaluate contractor billing systems. Recommend elimination of paragraph (a) and that the entire billing instructions of DFARS 252.204–7XXX include the following language, most of which is excerpted from proposed paragraph (b): "When submitting a request for payment, the Contractor shall separately identify a payment amount for each contract line item that is included in the request."

DoD Response: Concur in part. DoD recognizes the concern regarding unattainable compliance requirements,

in particular the requirement to "best" reflect work performance. However, DoD believes that the contract payments should provide a reasonable reflection of the work performance that relates to each contract line item. Therefore, the final rule replaces the requirement for identified line items to "best" reflect work performance with a requirement for identified line items to "reasonably" reflect work performance. In addition, the final rule permits the contracting officer to require billing at the contract line item level only when it is determined that such a requirement provides significant benefits to the Government. DoD believes these revisions mitigate the concerns regarding any possible significant impact on small and large entities.

7. *Comment:* The proposed invoice instructions at F–306(a) require electronic payment requests unless an exception in DFARS 232.7002 applies. The electronic invoicing exceptions in DFARS 232.7002 are not well-defined for all scenarios alluded to in 232.7002(a)(6). This leads to inconsistent processing, wasted effort by all parties, and unnecessary delays in payment. Therefore, it is recommended that DoD work with industry to develop a clearly defined exception process for situations where electronic invoicing cannot be achieved.

DoD Response: The recommendation is considered to be outside the scope of this case. However, the recommendation has been forwarded to the DoD office responsible for e-business matters.

8. *Comment:* For payment purposes on cost-type contracts, the goal should be to establish the minimum number of line items and appropriations accounts required to satisfy applicable statutes. If contracts contain only one appropriation, both the billing and payment process can be highly automated and still meet statutory requirements. Only one ACRN should be assigned to the unique combination of a specific appropriation and program year, substantially reducing the current ACRN count. Additionally, the appropriation and/or the ACRN should be used as the sole basis for a payment on cost-type contracts (asset valuation can be established in unique identification and contract management can be achieved via Cost/Schedule Status / Earned Value Management reporting). Use of appropriation level billings, when required, would reduce the billing detail by over 80 percent when compared to contract line item/ACRN level billing requirements. Also, the requirement to accumulate cost or even develop best/reasonable estimates should be used as a last resort to satisfy statutory requirements. Therefore, to adopt this approach, recommend that the PGI contain a list of billing instructions for the contractor to follow.

DoD Response: Do not concur. DoD does not believe that the PGI text needs to include a list of billing instructions for the contractor to follow. There is no need for the contractor to allocate costs among contract line items when one of the payment options at PGI 204.7108(d)(7) through (11) is selected, i.e., that function can be better performed by the payment office. Furthermore, DoD believes that a contractor should not be required to identify costs at the contract line item level if the contractor is simply going to use an allocation to identify such costs. In those cases where the contractor would simply be allocating the costs to obtain contract line item billing, the contracting officer should select one of options (d)(7) through (11) (allocation at the contract level). This is preferable to the contractor allocating the costs to the contract line item level and having the payment office do a second allocation to the ACRN level.

9. *Comment:* The draft PGI text at 204.201(3)(i)(D)(*1*) directs users to the Directory of DCAA offices available via the Internet at *http://www.dcaa.mil/directory.htm*. The specific Web site address provided in the PGI is not current and should be updated. In addition, the text should include a reference to the DCAA cognizant field office locator, available at the same Web site.

DoD Response: Concur. This change has been included in the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. The analysis is summarized as follows:

This final rule amends the DFARS to improve payment and billing instructions in DoD contracts. The objective of the rule is to streamline payment procedures and ensure line item accountability in contractor payment requests. Based upon public comments, DoD has revised the rule to remove the requirement for contractor payment requests to identify the contract line items that "best" reflect work performance. Instead, the final rule includes a requirement for payment requests to identify the contract line items that "reasonably" reflect work performance. In addition, the final rule permits contracting officers to require contractor billing at the contract line item level only when it is determined that such a requirement provides significant benefits to the Government. DoD believes these revisions mitigate the concerns raised during the public comment period, and that the rule will have an overall beneficial impact on small entities.

A copy of the analysis may be obtained from the point of contact specified herein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 215, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204, 215, 252, and Appendix F to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 215, 252, and Appendix F to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.201 is revised to read as follows:

204.201 Procedures.

Follow the procedures at PGI 204.201 for the distribution of contracts and modifications.

204.202 [Removed]

■ 3. Section 204.202 is removed.

■ 4. Section 204.7101 is amended by revising the definition of *Accounting classification reference number (ACRN)* to read as follows:

204.7101 Definitions.

Accounting classification reference number (ACRN) means any combination of a two position alpha/numeric code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.

* * * * *

■ 5. Section 204.7103–1 is amended by redesignating paragraphs (b) through (d) as paragraphs (d) through (f), respectively; and by adding new paragraphs (b) and (c) to read as follows:

204.7103–1 Criteria for establishing.

* * * * *

(b) All subline items and exhibit line items under one contract line item shall be the same contract type as the contract line item.

(c) For a contract that contains a combination of fixed-price line items, time-and-materials/labor-hour line items, and/or cost-reimbursement line items, identify the contract type for each contract line item in Section B, Supplies or Services and Prices/Costs, to facilitate appropriate payment.

* * * * *

■ 6. Section 204.7103–2 is revised to read as follows:

204.7103–2 Numbering procedures.

Follow the procedures at PGI 204.7103–2 for numbering contract line items.

■ 7. Section 204.7104–2 is revised to read as follows:

204.7104–2 Numbering procedures.

Follow the procedures at PGI 204.7104–2 for numbering contract subline items.

■ 8. Section 204.7106 is amended by adding paragraph (b)(3) to read as follows:

204.7106 Contract modifications.

* * * * *

(b) * * *

(3) If the modification will decrease the amount obligated—

(i) There shall be coordination between the administrative and procuring contracting offices before issuance of the modification; and

(ii) The contracting officer shall not issue the modification unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the Government.

■ 9. Section 204.7107 is revised to read as follows:

204.7107 Contract accounting classification reference number (ACRN).

Follow the procedures at PGI 204.7107 for assigning ACRNs.

■ 10. Sections 204.7108 and 204.7109 are added to read as follows:

204.7108 Payment instructions.

Follow the procedures at PGI 204.7108 for inclusion of payment instructions in contracts.

204.7109 Contract clause.

Use the clause at 252.204–7006, Billing Instructions, in solicitations and contracts if Section G includes—

(a) Any of the standard payment instructions at PGI 204.7108(d)(1) through (6); or

(b) Other payment instructions, in accordance with PGI 204.7108(d)(12), that require contractor identification of the contract line item(s) on the payment request.

PART 215—CONTRACTING BY NEGOTIATION

215.204–2 [Removed]

■ 11. Section 215.204–2 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Section 252.204–7006 is added to read as follows:

252.204–7006 Billing instructions.

As prescribed in 204.7109, use the following clause:

Billing Instructions (Oct 2005)

When submitting a request for payment, the Contractor shall—

(a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item included in the payment request.

(End of clause)

Appendix F—[Amended]

■ 13. Appendix F to Chapter 2 is amended in Part 3 by revising section F–306 to read as follows:

Appendix F—Material Inspection and Receiving Report

* * * * *

F–306 Invoice instructions.

(a) Contractors shall submit payment requests in electronic form, unless an exception in 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the Wide Area WorkFlow-Receipt and Acceptance electronic form (see paragraph (b)(1) of the clause at 252.232–7003) fulfills the requirement for an MIRR.

(b) If the contracting officer authorizes the contractor to submit an invoice in paper form, the Government encourages, but does not require, the contractor to use the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare the MIRR and forward the required number of copies to the payment office as follows:

(1) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(2) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE, for all invoice submissions; and three copies: "INVOICE COPY," when the payment office requires four copies. Questions regarding the appropriate number of copies (*i.e.*, one or four) should be directed to the applicable payment office.

(3) Forward the appropriate number of copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(4) Be sure to separate the copies of the MIRR used as an invoice from the copies of the MIRR used as a receiving report.

* * * * *

[FR Doc. 05–20217 Filed 10–7–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 100405D]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using trawl and jig gear to vessels using hook-and-line and pot gear in the BSAI. These actions are necessary to allow the 2005 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective October 5, 2005, until 2400 hours, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2005 Pacific cod TAC in the BSAI is 190,550 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). Pursuant to § 679.20(a)(7)(i)(A), 3,811 mt was allocated to vessels using jig gear, 97,181 mt to vessels using hook-and-line or pot gear, and 89,559 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to

catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 3.3 percent to catcher/processor vessels using pot gear; 15 percent to catcher vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft (18.3 meters (m)) length overall (LOA) that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)(C)).

On April 13, 2005, 1,150 mt of Pacific cod from the A season apportionment of the jig gear allocation was reallocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear (70 FR 19708, April 14, 2005). On May 17, 2005, 350 mt of Pacific cod from the B season apportionment of the jig gear allocation was reallocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear (70 FR 28486, May 18, 2005). On August 5, 2005, an additional 500 mt of Pacific cod from the B season apportionment of the jig gear allocation was reallocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear (70 FR 46436, August 10, 2005).

As of September 23, 2005, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processor vessels will not be able to harvest 9,273 mt and trawl catcher vessels will not be able to harvest 8,689 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*2*), NMFS apportions 17,962 mt of Pacific cod from trawl gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

The Regional Administrator has also determined that vessels using jig gear will not harvest 1,611 mt of their Pacific cod allocation by the end of the year. Also, catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear will not be able to harvest any additional Pacific cod. Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*1*) and § 679.20(a)(7)(ii)(B), NMFS is reallocating the unused amount of 1,611 mt of Pacific cod allocated to vessels using jig gear to catcher/processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) are revised as follows: 200 mt to vessels using jig gear, 96,019 mt to catcher/processor vessels using hook-and-line gear, 15,238 mt to catcher vessels using pot gear, 3,352 mt to catcher/processor vessels using pot gear, 35,506 mt to catcher/processor vessels using trawl gear, and 36,090 mt to catcher vessels using trawl gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of projected unused amounts of Pacific cod in the BSAI. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of September 23, 2005.

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

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

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

Dated: October 4, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20343 Filed 10–5–05; 2:19 pm]

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Proposed Rules

Federal Register
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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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 145 and 147

RIN 3038–AC19

Alternative Market Risk and Credit Risk Capital Charges for Futures Commission Merchants and Specified Foreign Currency Forward and Inventory Capital Charges

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is issuing this release to propose amendments to Commission rules that impose minimum financial and related reporting requirements upon each person registered as a futures commission merchant ("FCM"). Pursuant to rule amendments that became effective in August of 2004, the Securities and Exchange Commission ("SEC") has established a method for securities brokers or dealers ("BDs") that voluntarily elect SEC consolidated supervision for their ultimate holding companies and affiliates, and that also meet specified minimum capital and other requirements, to request approval to use internal mathematical models to determine their capital deductions for market risk and credit risk associated with their proprietary trading assets. Under the rule amendments that are proposed in this release, FCMs that are also BDs ("FCM/BDs") would have the option, subject to the reporting and other requirements that are specified in the proposed rulemaking, of electing to compute their adjusted net capital using their SEC-approved alternative market risk and credit risk capital deductions in lieu of CFTC requirements. The Commission is also proposing other rule amendments that address confidential treatment for the reports and statements that would be required to be filed under the proposed amendments, and also to address the confidential treatment of certain other information that all FCM/BDs must file with both the Commission and the SEC.

Finally, the Commission is also proposing rule amendments in this release that would amend the minimum financial requirements of FCMs and introducing brokers ("IBs") by reducing the capital deductions for their uncovered inventory or forward contracts in specified foreign currencies. The proposed reduction is consistent with guidance currently provided by the Commission to FCMs and IBs.

DATES: Comments must be received on or before November 10, 2005.

ADDRESSES: You may submit comments, identified by RIN 3038–AC19, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *secretary@cftc.gov*. Include "Proposed Amendment to Rule 1.17" in the subject line of the message.
- Fax: (202) 418–5521.
- Mail: Send to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington DC 20581.
- Courier: Same as Mail above.

All comments received will be posted without change to *http://www.cftc.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Associate Deputy Director and Chief Accountant, at (202) 418–5430, or Thelma Diaz, Special Counsel, at (202) 418–5137, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, D.C. 20581. Electronic mail: (*tsmith@cftc.gov*) or (*tdiaz@cftc.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

A. Capital Charges for Proprietary Trading Assets

Commission Rule 1.17(a) requires each FCM to maintain a minimum amount of "adjusted net capital", which is defined as the FCM's net capital less the deductions, or "haircuts", that are specified in Rule 1.17(c)(5) and (8).[1] For purposes of the required haircuts on the FCM's proprietary positions in securities, Rule 1.17(c)(5) incorporates by reference percentage deductions that are set forth in SEC regulations 17 CFR 240.15c3–1(c)(2)(vi) and (vii).[2] Also, Commission Rule 1.17(c)(2)(ii), in a manner similar to the SEC's requirements for BDs under 17 CFR 240.15c3–1(c)(2)(iv), requires unsecured receivables arising from an FCM's transactions in over-the-counter ("OTC") derivatives to be excluded from the FCM's current assets for purposes of determining the firm's regulatory capital. The deductions required for other proprietary assets of the FCM are set forth in other parts of Commission Rule 1.17(c).

The Commission and SEC have, to the extent practical, harmonized their respective capital rules in order to avoid creating inconsistent regulatory obligations for firms that are dually-registered FCMs and BDs. This harmonization of capital rules extends to the computation of net capital and adjusted net capital, and to the qualifications that subordinated debt must meet in order to qualify as regulatory capital. Furthermore, if an FCM is also registered as a BD, it may file an SEC Form X–17a–5, "Financial and Operational Combined Uniform Single Report" ("FOCUS Report") to satisfy its requirement to file with the Commission a Form 1–FR–FCM financial report. In particular, Commission Rule 1.10(h) treats Part II and Part IIA of the FOCUS report as acceptable substitutes for the Form 1–FR–FCM, provided that the FOCUS report includes all information required to be furnished on and submitted with Form 1–FR–FCM. Also, for those portions of the Form 1–FR–FCM that the Commission has designated as either publicly available or as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act, the Commission extends

[1] The rules of the Commission cited in this release may be found at 17 CFR Ch. I (2005). SEC rules cited in this release may be found at 17 CFR Ch. II (2005).

[2] Commission Rule 1.17(c)(5)(v) provides that the haircuts for an FCM's proprietary securities are "the percentages specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) ('securities haircuts') and 100 percent of the value of 'nonmarketable securities' as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii))."

the same treatment to those portions of the FOCUS Report that are equivalent to the Form 1–FR–FCM. The uniform capital computations, and related single-form filing requirements, harmonize the regulatory requirements imposed upon dual registrants while providing the Commission and SEC with the necessary financial information to assess whether firms maintain a minimum level of regulatory capital while engaging in futures and securities businesses.

B. SEC Amendments To Establish Alternative Capital Deductions

On June 21, 2004, the SEC adopted final rule amendments to its capital rules to provide an "alternative net capital computation for broker-dealers that voluntarily elect to be supervised on a consolidated basis," (the "Alternative Capital Computation").[3] As amended, SEC Rule 15c3–1(a)(7), (17 CFR 240.15c3–1(a)(7)), provides that the SEC may approve a BD's application, if submitted in accordance with the provisions of a new Appendix E (17 CFR 240.15c3–1e), for approval to use the Alternative Capital Computation when calculating its net capital. To the extent approved by the SEC, the BD using the Alternative Capital Computation would compute a total "deduction for market risk" for positions in the proprietary accounts of the BD, in accordance with the specific standards set forth in Appendix E (the standards are discussed in Part II of this release). The BD would calculate its regulatory capital using this deduction in lieu of the haircuts that SEC Rules 15c3–1(c)(2)(vi) and (c)(2)(vii) require for the BD's positions in securities.[4] The SEC may also approve alternative market risk deductions for the BD's proprietary positions in forward contracts and commodity futures contracts. Also, Appendix E provides that where the alternative market risk deduction has been used to compute the deduction on the underlying instrument for OTC derivatives of the BD, the BD would compute a "deduction for credit risk," using the standards set forth in Appendix E, and it would use this deduction in lieu of the capital charges that SEC Rule 15c3–1(c)(2)(iv) requires for the BD's credit exposures arising from OTC transactions in derivatives.

The amended SEC rules limit the availability of the Alternative Capital Computation to BDs that comply with enhanced net capital, notification, recordkeeping, and reporting requirements. SEC Rule 15c3–1(a)(7) requires the BD to maintain at all times "tentative net capital" [5] of not less than $1 billion and net capital of not less than $500 million, and to provide same day notice if the BD's tentative net capital is less than $5 billion, or some other "early warning" amount specified by the SEC.[6] The amended rules specify that the SEC's response to an early warning notice may include imposing additional conditions on the use of the Alternative Capital Computation.[7]

The Alternative Capital Computation is also limited to those BDs who: (i) Have in place an internal risk management system that complies with 17 CFR 240.15c3–4 (previously applicable only to OTC derivatives dealers registered with the SEC), which addresses not only their market risk and credit risk, but also liquidity, legal and operational risks at the firm; and (ii) whose ultimate holding company and affiliates have consented to SEC consolidated supervision, *i.e.*, they become a "consolidated supervised entity" ("CSE"). For purposes of such consolidated supervision, the BD's ultimate holding company and affiliated entities must consent to direct examination by the SEC, unless the holding company is subject to supervision by the Federal Reserve or foreign banking regulators because it is a U.S. holding company or foreign bank that has elected financial holding company status under the Bank Holding Company Act of 1956.[8] The SEC has added a new Appendix G to Rule 15c3–1 (17 CFR 240.15c3–1g), which establishes the minimum reporting, recordkeeping, and notification requirements for all holding companies of BDs that apply for, or have received approval for the use of, the Alternative Capital Computation.[9]

In adopting the Alternative Capital Computation, the SEC has also responded to concerns expressed by several U.S. BDs that are required, pursuant to a directive issued by the European Union ("EU") at the end of 2002 (the "Financial Groups Directive"), to demonstrate holding company supervision that is equivalent to EU consolidated supervision.[10] Absent a demonstration of comparable group-wide supervision, the EU may restrict or otherwise place conditions upon the operations of the European-based affiliates of these BDs. The consolidated supervision requirements in the SEC's amended rules provide a regulatory structure that is intended to satisfy the requirements of the Financial Groups Directive.

As the SEC noted when first proposing rules for the Alternate Capital Computation, the required market risk and credit risk deductions are expected to be substantially smaller in amount than the standardized deductions.[11] As the SEC rule amendments were being discussed and proposed, Commission staff identified that continued harmonization of the capital rules of the two agencies would require amendment of Rule 1.17, and communicated this to various market participants potentially affected by the difference between the SEC's proposed rules and Rule 1.17. After the SEC adopted rule amendments allowing BDs to apply for approval to use the Alternative Capital Computation, several FCM/BDs, along with representatives of the Securities Industry Association and the Futures Industry Association, contacted staff of the Commission's Division of Clearing and Intermediary Oversight (the "Division") to express their support for Commission rulemaking that would allow dually-registered FCM/BDs to use their SEC-approved alternative market risk and credit risk deductions when computing their adjusted net capital under Rule 1.17.[12] In addition, two

[3] The SEC's new rule was published at 69 FR 34428 (June 21, 2004). The effective date of the rule was August 20, 2004.

[4] As an example of the haircuts required by SEC Rule 15c3–1(c)(2)(vi), the haircut for equity securities is equal to 15 percent of the market value of the greater of the long or short equity position plus 15 percent of the market value of the lesser position, but only to the extent this position exceeds 25 percent of the greater position. The deduction for securities with no ready market is 100 percent under SEC Rule 15c3–1(c)(2)(vii).

[5] The BD's "tentative net capital" consists of its net capital before the approved deductions for market and credit risk under the SEC's amended rule, and also increased by the balance sheet value (including counterparty net exposure) resulting from transactions in derivative instruments that would otherwise be deducted by virtue of paragraph (c)(2)(iv) of Rule 15c3–1.

[6] Upon written application by a BD, the SEC may lower the threshold for the early warning requirement, either unconditionally or subject to specified terms and conditions. The SEC will consider various factors to determine whether the requirement is unnecessary. 69 FR at 34461.

[7] The additional conditions that may be imposed on the BD include restricting the BD's business on a product-specific, category-specific or general basis; requiring submission of a plan to increase its net capital or tentative net capital; requiring more frequent reporting; requiring modifications to the BD's internal risk management control procedures; or requiring capital deductions using the SEC's standardized haircuts. *See* 17 CFR 240.15c3–1e(e).

[8] The CSE rule specifically exempts FCM affiliates of BDs, and other functionally regulated BD affiliates, from the SEC's direct examination.

[9] To minimize duplicative regulation, Appendix G imposes fewer requirements on holding companies that have elected financial holding company status.

[10] *See* "Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002."

[11] The SEC's proposed rules for the Alternative Capital Computation were published in the **Federal Register** in 2003. 68 FR 62872 (November 6, 2003).

[12] The Securities Industry Association and the Futures Industry Association are industry trade

dually-registered FCM/BDs that had received SEC approval for the Alternative Capital Computation requested no-action positions from Division staff, without which the Alternative Capital Computation could not be used for purposes of their capital computation and reporting requirements to the Commission. The Division granted such relief on an interim basis, to be superseded by such final rules as the Commission might eventually adopt in connection with the Alternative Capital Computation.

II. SEC Requirements for BDs Using Alternative Capital Computation

A. SEC Appendix E Requirements for Computation of Alternative Deductions for Market Risk and Credit Risk.

1. Deduction for Market Risk.

The computation for the alternative market risk deduction is set forth in paragraph (b) of the new Appendix E (17 CFR 240.15c3–1e(b)), and is the sum of the following:

- For proprietary positions for which the SEC has approved the BD's use of "value at risk" ("VaR") models, "the VaR of the positions multiplied by the appropriate multiplication factor," which is initially set at three.[13] VaR models are mathematical models that are used to generate a summary measure of market risk for a portfolio of assets, and the VaR of a portfolio can be expressed in terms of the estimated loss in value, over a given time period, that is expected to be equaled or exceeded with a given, small probability. Under Appendix E, the loss estimates under the BD's VaR models must use price changes equivalent to a ten business-day period movement in rates and prices, and a confidence level of 99 percent, *i.e.*, the VaR of the BD's positions can be expressed as the ten business-day loss that is expected to be equaled or exceeded 1 percent of the time.[14] Appendix E also requires that the BD monitor whether the "multiplication factor" should be increased, by requiring the BD to conduct backtesting of the model beginning three months after the BD begins using the VaR model to calculate market risk. Backtesting "exceptions" will be determined by comparing the actual daily net trading profit or loss of the BD with the corresponding VaR measure generated by its model. As further specified in Appendix E, on the last business day of each quarter, the BD must identify the number of business days, for each of the past 250 business days, for which the actual net trading loss exceeded the corresponding VaR measure. The BD will then use, until it obtains the next quarter's backtesting results, the multiplication factor indicated in the table included in Appendix E, which increases the required multiplication factor based on the number of backtesting exceptions.
- For any positions for which the VaR model does not incorporate "specific risk," which is the risk that any position, particularly one with no ready market, does not have price moves that correlate to broad market moves, an additional deduction must be included in the BD's computation of its alternative market risk deduction. As part of the review of the BD's application, the SEC will review the BD's methodology for determining specific risk deductions.
- For proprietary positions for which the SEC has approved the use of "scenario analysis," the required deduction is the greatest loss, as indicated by the analysis, resulting from a range of adverse movements in relevant risk factors, prices, or spreads for the positions,[15] or is some multiple of the greatest loss based on the liquidity of the positions subject to scenario analysis.[16] This deduction is subject to a "floor," so that irrespective of the deduction otherwise indicated under scenario analysis, the resulting deduction for market risk must be at least $25 per 100 share equivalent contract for equity positions, or one-half of one percent of the face value of the contract for all other types of contracts.
- For all remaining proprietary positions for which the SEC has not approved the BD's use of VaR models or scenario analysis, the standard deductions specified in SEC rules 17 CFR 240.15c3–1(c)(2)(vi), (c)(2)(vii), and applicable appendices to § 240.15c3–1.

When first proposing the Alternative Capital Computation, the SEC noted that it had been modeled on rule amendments previously adopted by the SEC for OTC derivatives dealers in 1998.[17] In turn, the rules for OTC derivatives dealers parallel those that U.S. banking agencies had adopted in 1996 to require banks to compute a market risk charge, and to establish standards for the internally-generated market risk estimates that banks could use to compute the charge.[18] The rules adopted by the banking agencies implemented recommendations of the Basel Committee on Banking Supervision ("Basel Committee"),[19] which recognized the growing use of VaR models as part of the risk management procedures of internationally active banks with large trading portfolios.[20] The rules adopted by the banking agencies implemented capital charges for the market risks incurred by such banks, and approved the use of proprietary VaR models as part of the calculation of the required market risk charges, subject to the models satisfying certain "qualitative" and "quantitative" conditions.[21] These

groups whose members include broker-dealers, futures commission merchants, and representatives of other segments of the securities and futures industries.

[13] The multiplication factor may be increased based upon the number of exceptions observed during model backtesting, which the BD is required to perform, but may not be less than three.

[14] Incorporating VaR models into the firm's capital calculations offers the firm the advantage of increasing its ability to recognize the correlations and hedges in its trading portfolio, and reducing its capital charge for market risk as a consequence. For example, as the SEC has noted, its fixed-percentage securities haircuts recognize only limited hedging activities, and do not account for historical correlations between foreign securities and U.S. securities or between equity securities and debt securities. According to the SEC, by "failing to recognize offsets from these correlations between and within asset classes, the fixed percentage haircut method may cause firms with large, diverse portfolios to reserve capital that actually overcompensates for market risk." 62 FR 68011, 68014 (December 30, 1997) (SEC concept release regarding the extent to which statistical models might be considered for use in setting the capital requirements for a BD's proprietary positions).

[15] The relevant risk factors, prices, or spreads are designed to represent a negative movement greater than, or equal to, the worst ten-day movement over the four years preceding the calculation of the greatest loss.

[16] If historical data is insufficient, the SEC requires the deduction for positions for which scenario analysis is used to be the largest loss within a three standard deviation movement in those risk factors, prices, or spreads over a ten-day period, multiplied by an appropriate liquidity adjustment factor.

[17] 68 FR at 62872.

[18] The SEC first proposed rules for OTC derivatives dealers in 1997, and stated that they were consistent with the market risk capital requirements adopted by the U.S. banking agencies. 62 FR 67940, 67947 (December 30, 1997).

[19] The Basel Committee on Banking Supervision is a committee of banking supervisory authorities established in 1974 by the central-bank Governors of the Group of Ten countries. It consists of senior representatives of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom and the United States. It usually meets at the Bank for International Settlements in Basel, where its permanent Secretariat is located.

[20] In 1988, the Basel Committee published a document titled the "International Convergence of Capital Measurement and Capital Standards" (the "Basel Capital Accord"), which set forth an agreed framework for measuring capital adequacy and the minimum requirements for capital for banking institutions. There have been several amendments to the Basel Capital Accord in the intervening years, including, in January of 1996, the "Amendment to the Capital Accord to Incorporate Market Risks." Most recently, the Basel Committee issued a revised framework in June of 2004 ("Basel II") that amends provisions related to credit risk and adds provisions to address operational risk.

[21] *See, generally*, 61 FR 47358 (September 6, 1996) (final rules adopted by federal banking

Continued

conditions included the requirement of an appropriate multiplication factor, initially set at three and increased as indicated by backtesting results.[22]

The amended SEC rules similarly specify several qualitative and quantitative requirements for the VaR models used by those BDs that are approved to use the Alternative Capital Computation. The qualitative requirements set forth in Appendix E include certain requirements already described above, *i.e.*, those related to the multiplication factors applied to VaR based on backtesting results, and also include the following: (i) VaR models used to calculate market risk or credit risk must be integrated into the daily internal risk management system of the BD; (ii) VaR models must be reviewed both periodically (by either the BD's internal audit staff or an outside auditor) and annually (by a registered public accounting firm, as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*); and (iii) the BD must have, for purposes of incorporating specific risk into its VaR model, methodologies in place to capture liquidity, event, and default risk adequately for each position. Other requirements for the models used to calculate deductions for specific risk include that they explain the historical price variation in the portfolio; capture concentration in terms of magnitude and changes in composition; be robust to an adverse environment; and be validated through backtesting.

The quantitative requirements for the VaR models are also set forth in Appendix E, and in addition to the requirement, described above, for market risk VaR models to be based on a 99 percent confidence level and ten-day holding period, also include the following: (i) The VaR model must use an effective historical observation period of at least one year; (ii) the BD must consider the effects of market stress in its construction of the model; (iii) the historical data sets used for the models must be updated at least monthly and reassessed whenever market prices or volatilities change significantly; and (iv) the VaR model must take into account and incorporate all significant, identifiable market risk factors applicable to positions in the accounts of the BD.[23] An additional quantitative requirement, related to the VaR models used for the BD's deduction for credit risk, is discussed below.

2. Deduction for Credit Risk

To determine its alternative deduction "for credit risk on transactions in derivative instruments (if [Appendix E] is used to calculate a deduction for market risk on those instruments)," Appendix E requires the BD to compute three separate capital charges and add them together. As set forth in 17 CFR 240.15c3–1e(c), the alternative deduction for credit risk is an amount equal to the sum of the following three charges:

(1) A "counterparty exposure charge" in an amount equal to the sum of the following: (i) The net replacement value in the account of each counterparty that is insolvent, or in bankruptcy, or that has senior unsecured long-term debt in default; and (ii) For each of the BD's other counterparties, a "credit equivalent amount" (generally speaking, the extent to which, after taking into account available collateral and enforceable netting agreements, the BD is exposed to the creditworthiness of the counterparty, both in terms of the current cost of replacing the positive cash flow under the OTC agreement if the counterparty were to default, and in terms of the potential for the replacement cost to increase over the length of the contract, due to movements in the rates or prices underlying the contract (the firm's "maximum potential exposure")), multiplied by the "credit risk weight" of the counterparty (counterparties with lower credit ratings have higher credit risk weights),[24] multiplied by 8 percent.[25] "Maximum potential exposure" will be determined using a VaR model, which, like the market risk VaR model, must use a 99 percent confidence level, but the price changes will be equivalent to a one-year movement in rates and prices.[26] The VaR for maximum potential exposure must also be multiplied by a multiplication factor, which will be initially set at one, but is also subject to increases based on backtesting exceptions, in accordance with a schedule of multiplication factors that has been proposed by the BD and approved by the SEC.

(2) A "concentration charge by counterparty," which is the total determined by adding together, for each counterparty of a given credit risk weight, a specified percentage of the amount of the BD's current exposure to the counterparty that is in excess of 5 percent of the BD's tentative net capital.[27]

(3) A "portfolio concentration charge" of 100 percent of the amount of the BD's aggregate current exposure for all counterparties in excess of 50 percent of the tentative net capital of the BD.

The SEC has stated that the provisions related to OTC derivatives in the amended rules are based on its experience with the reporting provided by the Derivatives Policy Group,[28] and

agencies to require market risk capital charge and adopting standards for the "internal models" approach for calculation of the charge).

[22] The table in Appendix E that provides the required VaR multiplication factor is consistent with the recommendations made by the Basel Committee in 1996. *See* "Supervisory Framework for the Use of Backtesting in Conjunction with the Internal Models Approach to Market Risk Capital Requirements" (January 1996).

[23] The required market risk factors under the SEC's rule include not only specific risk for individual positions, but also the following general market risks: (i) Risks arising from the non-linear price characteristics of derivatives and the sensitivity of the market value of those positions to changes in the volatility of the derivatives' underlying rates and prices; (ii) empirical correlations with and across risk factors or, alternatively, risk factors sufficient to cover all the market risk inherent in the positions in the proprietary or other trading accounts of the BD, including interest rate risk, equity price risk, foreign exchange risk, and commodity price risk; and (iii) where applicable, spread risk, and segments of the yield curve sufficient to capture differences in volatility and imperfect correlation of rates along the yield curve for securities and derivatives that are sensitive to different interest rates.

[24] Appendix E assigns specific credit weights, ranging from 20 percent to 150 percent, based either on the ratings made by a nationally recognized statistical rating organization or internally by the firm. A BD may request approval to determine credit risk weights based on internal calculations. The BD must make and keep current a record of the basis for the credit rating, and credit risk weight, for each counterparty.

[25] The SEC stated that the 8 percent multiplier is consistent with the calculation of credit risk in the OTC derivatives dealer rules and applicable requirements in Basel Committee publications, and is designed to dampen leverage to help ensure that the firm maintains a safe level of capital.

[26] The SEC may approve a shorter time horizon (but not less than ten business days), based on a review of the BD's procedures for managing collateral, the daily mark-to-market of the collateral, and the BD's ability to call for additional collateral daily.

[27] Appendix E requires that for each counterparty with a credit risk weight of 20 percent or less, the concentration charge is 5 percent of the amount of the current exposure to the counterparty that is in excess of 5 percent of the BD's tentative net capital; for each counterparty with a credit risk weight of greater than 20 percent but less than 50 percent, the charge is 20 percent of the current exposure to the counterparty that is in excess of 5 percent of the BD's tentative net capital; and for each counterparty with a credit risk weight of greater than 50 percent, the charge is 50 percent of the current exposure to the counterparty that is in excess of 5 percent of the BD's tentative net capital.

[28] The Derivatives Policy Group ("DPG") consists of several U.S. firms that are most active in the OTC derivatives market. The DPG was formed at the request of the SEC to address the public policy issues arising from the activities of unregistered affiliates of BDs. In March of 1995 the DPG published its "Framework for Voluntary Oversight, a Framework for Voluntary Oversight of the OTC Derivatives Activities of Securities Firm Affiliates to Promote Confidence and Stability in Financial Markets," under which the members of the DPG agreed to report voluntarily to the SEC on their activities in the OTC derivatives market.

also with the SEC's regulation of OTC derivatives dealers.[29] The provisions for OTC derivatives also reflect the reporting recommendations made by the Basel Committee and the Technical Committee of the International Organization of Securities Commissions ("IOSCO") in a joint report issued in 1995 and revised in 1998, which included recommendations for the reporting by banks and securities firms related to the credit risk of their OTC derivatives, particularly their current and potential credit exposures to their counterparties, the credit quality of their counterparties, and the concentration of credit risk with these counterparties.[30]

B. SEC Application Process

The approval process under Appendix E of SEC Rule 15c3–1 is initiated by the filing of an application by the BD, which is required to: (i) Describe the mathematical models used to price positions and to compute market risk and credit risk capital deductions, and explain how the models meet the required quantitative and qualitative standards set forth in SEC regulations; (ii) describe the BD's internal risk management control system and how that system satisfies the requirements set forth in SEC regulations; (iii) include corrected or updated information going forward as appropriate; and (iv) provide a written undertaking and certain information from the BD's holding company. Furthermore, the BD must amend or resubmit an application to obtain SEC approval of any material change to its approved mathematical models. The SEC may approve the application in whole or in part, and the SEC may revoke its approval upon certain conditions. The SEC delegates to the Director of the SEC's Division of Market Regulation the authority to undertake specific activities and determinations under the rule, including the authority to approve any amendments to the BD's application. If a BD decides it no longer wishes to continue using its approved alternative market risk and credit risk charges, it must give notice to the SEC 45 days (or a shorter or longer period as approved by SEC) prior to the BD ceasing use of the approved models and reverting to the standard haircuts. The SEC has also specified in Appendix E, at paragraph (a)(11), that the BD's approval to use the Alternative Capital Computation may be revoked by SEC order, upon a finding that the exemption is no longer necessary or appropriate in the public interest or for the protection of investors. The rule further states that in making its finding, the SEC will consider the compliance history of the BD related to its use of models, the financial and operational strength of the BD and its ultimate holding company, the BD's compliance with its internal risk management controls, and the holding company's compliance with its written undertaking with the SEC.

C. Reporting Required by SEC for the Alternative Capital Computation

To implement other conditions for the use of the Alternative Capital Computation, the SEC also amended its Rule 17a–5 (17 CFR 240.17a–5), which sets forth financial reporting requirements applicable to all BDs. In addition to the information otherwise required under SEC Rule 17a–5(a), a BD that uses the Alternative Capital Computation must, on a monthly basis, file reports that include: (i) Regular risk reports supplied to the BD's senior management in the format described in the application; (ii) for each product for which the BD calculates a deduction for market risk in accordance with Appendix E, the product category and the amount of the deduction for market risk; (iii) a graph reflecting, for each business line, the daily intra-month VaR; (iv) the aggregate value at risk for the BD; (v) for each product for which the BD uses scenario analysis, the product category and the deduction for market risk; and (vi) credit risk information on derivatives exposures. More specifically, the credit risk information to be filed for OTC derivatives exposures includes: (i) The BD's overall current exposure; (ii) its current exposure (including commitments) listed by counterparty for the 15 largest exposures; (iii) the 10 largest commitments listed by counterparty; (iv) the BD's maximum potential exposure listed by counterparty for the 15 largest exposures; (v) the BD's aggregate maximum potential exposure; (vi) a summary report reflecting the BD's current and maximum potential exposures by credit rating category; and (vii) a summary report reflecting the BD's current exposure for each of the top ten countries to which the BD is exposed (by residence of the main operating group of the counterparty).

The amended SEC Rule 17a–5(a) also requires quarterly reports that include: (i) the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR; and (ii) the results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions. BDs approved to use the Alternative Capital Computation must also file supplements to their annual financial statements, which under amended SEC Rule 17a–5(k) are to consist of: (i) An accountant's report on management controls (indicating the results of the review made by a registered public accounting firm of the BD's internal risk management control system); and (ii) a related statement, made prior to commencement of the accountant's review, that describes the review procedures agreed to by the BD and the accountant.

III. Proposed Rules for FCMs Registered as BDs To Use Their SEC-Approved Capital Charges

The SEC, in adopting its rules permitting alternative capital charges incorporating VaR measurements for qualifying BDs subject to consolidated supervision, commented that "the alternative method of computing net capital responds to [broker and dealer] requests to align their supervisory risk management practices and regulatory capital requirements more closely."[31] Absent the changes that are being proposed in this release to Commission Rule 1.17, the potential for reduced capital charges that is available to dual registrants under the Alternative Capital Computation would not be available under the Commission's rules. As a result, FCM/BDs would be faced with potentially complex capital computations and compliance burdens. Given the commonality of purpose between the capital charges required by the SEC for BD registrants and by the Commission for FCM registrants, the Commission is therefore proposing to permit dual registrants that have qualified for the exemption under the SEC's net capital rule to use the same alternative charges with respect to their calculation of minimum CFTC net capital, subject to the general requirement that the Commission receive the same notices and the monthly, quarterly and annual reporting information, as described above, that the SEC's amended rules require FCM/BDs to provide to the SEC. As for holding company information that is provided to the SEC under the new Appendix G to SEC Rule 15c3–1, or as part of the

[29] 68 FR at 62879.

[30] *See* "Framework for Supervisory Information about Derivatives and Trading Activities," published in September of 1998 by the Basel Committee and IOSCO. IOSCO provides an international cooperative forum for securities regulatory agencies, and its member securities agencies regulate more than 90 percent of the world's securities markets.

[31] 69 FR at 34428.

application that the BD files with the SEC to request approval to use the Alternative Capital Computation, the proposed rules in the release do not require the Commission's receipt of such holding company information, because such information is being provided to the SEC for purposes of the SEC's consolidated supervision of the holding company.

In formulating the proposed amendments, the Commission has taken into consideration that the Alternative Capital Computation, unlike the current standardized charges, is determined by an ongoing oversight process that results in individualized capital charges that require considerable firm-specific information. Pursuant to Commission Rule 1.17(a)(3), FCMs must be able to demonstrate to the satisfaction of the Commission their compliance with their minimum financial requirements under the Commodity Exchange Act and implementing regulations of the Commission. The proposed amendments to Rule 1.17 would enable FCM/BDs to elect to use their SEC approved capital charges in satisfaction of their requirements under Rule 1.17, subject to compliance with FCM notification and filing requirements that would promote the Commission's risk oversight of FCMs, given their critically important role as risk intermediaries in the futures and options markets.

The Commission is not proposing any amendments in this release to Rules 1.14 and 1.15, pursuant to which FCMs are required to maintain and report "risk assessment" information to the Commission concerning the FCM's material affiliates. The SEC imposes similar requirements on BDs, through SEC Rules 17h–1T and 17h–2T, for recordkeeping and reporting on the material affiliates of the BD. A firm that is dually registered as a BD and an FCM must comply with the risk assessment regulations of the SEC and the Commission, but Commission Rule 1.15(d)(1) permits FCM/BDs to meet their filing requirements by providing copies to the Commission of the risk assessment documents that are filed with the SEC.[32]

Given the overlap between information that the SEC requires under the newly adopted Appendix G and under SEC Rules 17h–1T and 17h–2T, the SEC amended its rules so that BDs whose holding companies are directly examined by the SEC are relieved of having to also meet the filing obligations required by SEC Rules 17h–1T and 17h–2T. Because the Commission does not require holding company information under the amendments to Rule 1.17 proposed in this release, the proposed rule amendments do not duplicate the filing requirements of Commission Rules 1.14 and 1.15. FCM/BDs that elect to use the Alternative Capital Computation will therefore continue to be required to comply with the provisions of Rules 1.14 and 1.15.

A. Proposal to Permit FCMs To Elect To Use Their SEC-Approved Capital Charges

The Commission proposes to amend paragraph (c)(6) of Rule 1.17 by providing that an FCM/BD may elect, if it satisfies the requirements of proposed paragraph (c)(6), to compute its adjusted net capital using alternative capital deductions that the SEC has approved by written order under 17 CFR 240.15c3–1(a)(7). To the extent that the SEC has approved alternative capital deductions for the FCM/BD's unsecured receivables from OTC transactions in derivatives, or for its proprietary positions in securities, forward contracts, or futures contracts, the FCM/BD may use these same alternative capital deductions when computing its adjusted net capital. These alternative deductions would be used in lieu of the amounts that otherwise would be required by the following regulations: Rule 1.17(c)(2)(ii) for unsecured receivables from OTC derivatives transactions; Rule 1.17(c)(5)(ii) for proprietary positions in forward contracts; Rule 1.17(c)(5)(v) for proprietary positions in securities; and Rule 1.17(c)(5)(x) for proprietary positions in futures contracts. The proposed rulemaking would not alter or affect the haircuts that Rule 1.17(c)(5)(v) and Rule 1.32(b) require for securities that are held in segregation under Section 4d of the Commodity Exchange Act, because the alternative deductions apply solely to an FCM/BD's proprietary positions.[33]

B. Proposed Requirements for FCMs Electing the Alternative Capital Computation

1. Notice of Election or of Changes to Election

Proposed paragraph (c)(6)(ii) of Rule 1.17 would specify that an FCM's election to use the Alternative Capital Computation would not be effective unless and until it has filed with the Commission a notice, addressed to the Director of the Division of Clearing and Intermediary Oversight, that is to include: (i) A copy of the SEC order approving its alternative market risk and credit risk capital charges; and (ii) a statement that identifies the amount of tentative net capital below which the FCM is required to provide notice to the SEC, and that also includes portions of the information made available to the SEC for purposes of its request for approval to use the Alternative Capital Computation, as follows:[34]

(1) A list of the categories of positions that the firm holds in its proprietary accounts, and, for each such category, a description of the methods that the firm will use to calculate its deductions for market risk and credit risk, and, if calculated separately, its deductions for specific risk;

(2) A description of the VaR models to be used for its market risk and credit risk deductions, and an overview of the integration of the models into the internal risk management control system of the firm;

(3) A description of how the firm will calculate current exposure and maximum potential exposure for its deductions for credit risk;

(4) A description of how the firm will determine internal credit ratings of counterparties and internal credit risk weights of counterparties, if applicable; and

(5) A description of the estimated effect of the alternative market risk and credit risk deductions on the amounts reported by the firm as net capital and adjusted net capital.

Proposed Rule 1.17(c)(6)(ii) would also require the FCM to supplement its statement, upon the request of the Commission made at any time, with any other explanatory information for the firm's computation of its alternative market risk and credit risk deductions as the Commission may require at its

[32] To comply with SEC Rule 17h–2T, BDs file SEC Form 17–H, and Commission Rule 1.15(d)(1) allows FCM/BDs to comply with the requirements in Rules 1.15(a)(1)(i) and (a)(2) by filing copies with the Commission of their Forms 17–H, if these are additionally supplemented to ensure that the Commission receives all of the information required under Rule 1.15.

[33] FCM/BDs using the Alternative Capital Computation would continue to be required, under Rule 1.17(c)(5)(v), to deduct the securities haircuts specified in SEC Rules 15c3–1(c)(2)(vi) and (vii) from the value of securities that are held in segregated accounts under Section 4d and the Commission's implementing regulations and which were not deposited by customers. Such FCM/BDs would also continue to be required, when computing the amount of funds required to be in segregated accounts, to use the standard SEC securities haircut expressly referenced in Rule 1.32(b), *i.e.*, SEC Rule 15c3–1(c)(2)(vi). Rule 1.32 applies this haircut for purposes of the permissible offset of any net deficit in a customer's account against the current market value of readily marketable securities, less the SEC standard haircut, that are held for the same customer's account.

[34] As noted earlier, SEC Rule 15c3–1(a)(7)(ii) requires same-day notice to the SEC if the BD's tentative net capital is less than $5 billion, or a lower amount that has been agreed to by the SEC.

discretion. The requests for explanatory information under proposed Rule 1.17(c)(6)(ii) may be made by the Director of the Division of Clearing and Intermediary Oversight, to whom, as set forth in Commission Rule 140.91(a)(6), the Commission has delegated authority for the functions reserved for the Commission under Rule 1.17.

Proposed Rule 1.17(c)(6)(ii) would further provide that the FCM must file, as a supplemental notice with the Director of the Division of Clearing and Intermediary Oversight, a notice advising that the SEC has imposed additional or revised conditions after the date of the SEC order filed with the FCM's original notice to the Director of the Division of Clearing and Intermediary Oversight. The FCM must also file as a supplemental notice a copy of any approval by the SEC of amendments that the firm has requested for its application to use the Alternative Capital Computation.

An FCM would also be permitted under the proposed rule to voluntarily change its election, by filing with the Director of the Division of Clearing and Intermediary Oversight a written notice that specifies a future date as of which its market risk and credit risk capital charges will no longer be determined by the Alternative Capital Computation, but will instead be computed as otherwise required under the Commission's rules.

2. Conditions UNDER Which FCM May No Longer Elect Alternative Capital Charges

Proposed paragraph (c)(6)(iii) of Rule 1.17 would provide that an FCM may no longer elect to use its SEC-approved alternative market risk and credit risk deductions, and shall instead compute the charges otherwise required under Rules 1.17(c)(5) or 1.17(c)(2), upon the occurrence of any of the following: (i) The SEC revokes its approval of the firm's market risk and credit risk deductions; (ii) the firm fails to come into compliance with its filing requirements under the proposed rule, after having received from the Director of the Division of Clearing and Intermediary Oversight written notification that the firm is not in compliance with its filing requirements, and must cease using the Alternative Capital Computation if it has not come into compliance by a date specified in the notice; or (iii) the Commission by written order finds that permitting the firm to continue to use such alternative market risk and credit risk deductions is no longer appropriate for the protection of customers of the FCM or the financial integrity of the futures or options markets.[35]

3. Additional Filing Requirements

In addition to the notice and supplemental notices described above, proposed paragraph (c)(6)(iv) of Rule 1.17 would also provide that any firm that elects to use the Alternative Capital Computation must file with the Commission copies of all additional monthly, quarterly, and annual reporting items that BDs who are approved to use the Alternative Capital Computation must file with SEC, as discussed above. The FCM would also be required to file with the Commission a copy of the notice that it must file with the SEC whenever its tentative net capital falls below the amount required by the SEC, or of the notice filed with the SEC or the firm's designated examining authority in regard to planned withdrawals of excess net capital.

Specifically, the proposed rule would require the following to be filed with the Commission, at the same time that originals are filed with the SEC:

(1) All information that the firm files on a monthly basis with its designated examining authority or the SEC in satisfaction of SEC Rule 17a–5(a)(5)(i), whether by way of schedules to the firm's FOCUS reports or by other filings;

(2) The quarterly reports required by SEC Rule 17a–5(a)(5)(ii);

(3) The supplemental annual filings as required by SEC Rule 17a–5(k), which consist of a report on management controls that is prepared by a registered public accounting firm and is filed by the firm concurrently with its annual audit report, and also a related statement, filed prior to the commencement of the accountant's review but no later than December 10 of each year, that includes a description of the procedures agreed to by the firm and the accountant and a notice describing changes to the agreed-upon procedures, if any, or stating that there are no changes; and

(4) Any notification to the SEC or the firm's designated examining authority of planned withdrawals of excess net capital, and any notification that the firm is required to file with the SEC when its tentative net capital is below an amount specified by the SEC.

BDs that use the Alternative Capital Computation also file a revised Part II to the FOCUS report, designated "Part II CSE". This revised FOCUS report includes financial information that BDs previously reported in Part II of the FOCUS Report, and also includes new schedules that provide much of the additional information that BDs who use the Alternative Capital Computation must report on a monthly basis. In order to facilitate the firm's reporting requirements and reduce administrative burden, the Commission proposes to amend Rule 1.10(h) to specify that a dual-registrant may file, in lieu of its Form 1–FR–FCM report, a copy of the FOCUS Report, Part II CSE that the firm files with the SEC.[36]

C. Treatment of Information Received From FCMs Electing the Alternative Capital Computation

1. The Freedom of Information and Sunshine Acts

The Freedom of Information Act, 5 U.S.C. 552 *et seq.* ("FOIA"), provides generally that the public has a right of access to federal agency records except to the extent such records, or portions of them, are protected from disclosure by one (or more) of nine narrow exemptions. The Government in the Sunshine Act, 5 U.S.C. 552b ("Sunshine Act"), enacted to ensure that agency action is open to public scrutiny, contains identical exceptions. Accordingly, the Commission is required by the FOIA and the Sunshine Act to make public its records and actions unless a specific exemption is available.

Historically, portions of the Form 1–FR and FOCUS reports that are filed with the Commission under Rule 1.10 have been available to the public.[37]

[35] Because the proposed rule would permit only dual registrants to use the Alternative Capital Computation, an FCM's election to use the Alternative Capital Computation would automatically terminate immediately, without further action by the Commission, if it ceases to be dually-registered as a BD.

[36] Several other Commission rules include references to Parts II and Part IIA of the FOCUS report, in order to facilitate the filing of the FOCUS report in lieu of the Form 1–FR–FCM. The Commission also proposes be amend these rules to add a reference to Part II CSE. In particular, the Commission proposes to amend the following rules: Rule 1.10(d)(4)(ii), which sets forth the requirements for "authorized signers" of the FOCUS report; Rule 1.10(f)(1), which sets forth the procedures required to obtain extensions of time for filing the FOCUS report; Rule 1.16(c)(5), which requires the accountant's supplemental report on material inadequacies to be filed as of the same date as the Form 1–FR or FOCUS report; Rules 1.18(a) and (b)(2), which permit FOCUS filings to satisfy certain recordkeeping requirements of the FCM; and Rule 1.52(a), which permits the designated self-regulatory organization of a dual registrant to accept a FOCUS report in lieu of a Form 1–FR–FCM.

[37] The statement of financial condition, which consists of a balance sheet showing assets, liabilities and ownership equity; the computations for net capital and minimum capital requirements; and the statements related to the segregation of customer funds under Section 4d of the Commodity Exchange Act. See 17 CFR 1.10g. Since 1995, the Commission routinely has published on its Web site

Continued

Other portions of these reports currently are exempt from disclosure [38] as confidential commercial or financial information pursuant to Commission regulation 145.5(d), which tracks the language of its FOIA counterpart, exemption (b)(4).[39] Similarly, Commission meetings (or portions of meetings) may be "closed" under the Sunshine Act where the Commission determines that open meetings will likely reveal information protected by an exemption.[40]

The Commission believes that the filings required by the proposed amendments, as well as certain portions of the Form 1–FR and FOCUS reports presently filed with the Commission pursuant to Rule 1.10, also are protected from disclosure by FOIA and Sunshine Act exemption (8), pursuant to which the Commission is authorized to withhold from the public matters "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. 552(b)(8) and 5 U.S.C. 552b(c)(8). Commission Rules 145.5(h) and 147.3(b)(8) similarly provide that the Commission generally will not make public matters that are "contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions."

Because the term "financial institution" is not defined either in the FOIA or its legislative history, courts have relied on the legislative history of the Government in the Sunshine Act,[41] a statute in *pari materia* with the FOIA, to take an inclusionary and expansive view of the term.[42] The Commission is aware that no court directly has considered whether Commission registrants are financial institutions for purposes of either exemption 8; the Commission believes, however, that the language of the Sunshine Act's legislative history contemplates the inclusion of commodities professionals, including futures commission merchants, designated contract markets, derivatives transaction execution facilities, commodity pool operators and commodity trading advisors. Recent legislation bolsters this view. The USA PATRIOT Act [43] defines FCMs, CPOs and CTAs as financial institutions for purposes of the anti-money laundering requirements of the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*; 31 U.S.C. 5312(c), and identifies the Commission as a "federal functional regulator." [44] Similarly, Section 5g(a) of the Commodity Exchange Act provides that any FCM, CTA, CPO or IB that is subject to the Commission's jurisdiction with respect to any financial activity shall be treated as a financial institutions for purposes of the privacy requirements in Title V of the Gramm-Leach-Bliley Act. 7 U.S.C. 7b–2(a).[45]

The primary purposes of FOIA exemption 8 have been described as "protecting the integrity of financial institutions and facilitating cooperation between [agencies] and the entities regulated by [them]." [46] In light of the expanded activities and growing impact of FCMs as financial institutions,[47] and the delineation in the Commodity Futures Modernization Act of 2000 ("CFMA") [48] of the Commission's oversight role with respect to all Commission registrants, these goals are especially desirable.

2. Proposed Amendments to Parts 1, 145, and 147

In light of these considerations, the Commission proposes to treat as nonpublic certain financial information filed with it by FCMs and BDs. Under the proposed amendments to Rule 1.10(g), statements of financial condition in monthly FOCUS reports, the full computations of net capital, and the minimum capital requirements in monthly FOCUS reports would no longer be publicly available. The express mandates of the Commodity Exchange Act, however, support the Commission's determination that certain information that is filed in Form 1–FR and FOCUS reports remain

selected financial information for every FCM from the publicly available statements and schedules listed in rule 1.10(g): (1) Total adjusted net capital; (2) minimum capital requirement; (3) adjusted net capital in excess of the minimum requirement; (4) customer funds that the Commission requires to be held in segregated accounts in accordance with Section 4d of the Act; and (5) customer funds that the Commission requires to be held in secured accounts in accordance with Part 30 of the Commission's regulations.

[38] See 17 CFR 145.5 and 147.3. Those portions are: the Statement of Income (Loss); the Statement of Cash Flows; the Statement of Changes in Ownership Equity; the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement; the Statement of Changes in Financial Position; the Computation for Determination of Reserve Requirements for Broker-Dealers under (SEC) Rule 15c3–3; the Statement denoted "Exemptive Provision Under (SEC) Rule 15c3–3;" the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital, and the Recap thereof; the Statement of Financial and Operational Data; and the accountant's report on material inadequacies filed under Rule 1.16(c)(5). The foregoing include items that all FCMs and IBs are required to file, and also include items that are filed only by BDs that file FOCUS reports in lieu of Form 1–FR.

[39] Both the FOIA exemption (b)(4) and Commission rule 145.5(d) exempt from disclosure matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

[40] As noted, the Sunshine Act exemptions are identical to their FOIA counterparts. The Commission's Sunshine Act obligations are codified in its Part 147 rules, 17 CFR 147.

[41] The Senate Report accompanying the Sunshine Act states that: [The term is] intended to include banks, savings and loan associations, credit unions, *brokers and dealers in securities* or commodities, *exchanges dealing in securities* or commodities, such as the New York Stock Exchange, investment companies, investment advisors, self-regulatory organizations subject to 15 U.S.C. 78s, and institutional managers as defined in 15 U.S.C. 78m. S. Rep. No. 354, 94th Cong., 1st Sess. 24 (1975). (emphasis supplied).

[42] Accordingly, several district courts have interpreted the term "financial institutions" broadly for purposes of FOIA exemption 8. *See Mermelstein* v. *SEC*, 629 F.Supp.672, 673–75 (D.D.C. 1986) (Congress did not take a restrictive view of "financial institutions" and intended to include securities exchanges); *Berliner, Zisser, Wolter & Gollegos, P.C.* v. *SEC*, 962 F.Supp. 1348, 1352–53 (D. Colo. 1997) (including investment advisors, as fiduciaries who direct and make important investment decisions, in the definition "furthers Exemption 8's dual purposes of protecting the integrity of financial institutions and facilitating cooperation between the SEC and the entities regulated by it"); *Feshboch* v. *SEC*, 5 F.Supp. 2d 774, 781 (N.D. Cal. 1997) (the term financial institution encompasses self-regulatory organizations such as the NASD).

[43] The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107–56, 115 Stat. 272 (2001).

[44] Section 509(2) of the Gramm-Leach-Bliley Act includes as federal functional regulators the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; and the Securities and Exchange Commission.

As a separate matter, the Chairman of the Commission is a member of the President's Working Group on Financial Markets, along with the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Securities and Exchange Commission. The Working Group was formed with the goal of enhancing the integrity, efficiency, orderliness, and competitiveness of the U.S. financial markets and maintaining investor confidence. *See* Executive Order 12631 (March 18, 1988).

[45] Generally, Title V of the Gramm-Leach-Bliley Act limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties.

[46] *Berliner, Zisser, Walter & Gallegos, supra.*

[47] The Commission noted the increased significance of FCMs in global financial markets when proposing, and subsequently adopting, amendments to Rule 1.10 to require that Form 1–FR—FCM reports and equivalent FOCUS reports be filed on a monthly rather than quarterly basis. 69 FR 49874 (August 12, 2004).

[48] Pub. L. 106–554, App. E, 114 Stat. 2763 (2000).

publicly available. As proposed to be amended, Rule 1.10(g) would provide that the following information in Forms 1–FR and FOCUS reports would be publicly available: (i) The amounts for a registrant's adjusted net capital, its minimum capital requirement under Rule 1.17, and its adjusted net capital in excess of its minimum capital requirement; (ii) the statement of financial condition in the certified annual financial report, and footnote disclosures thereof; and (iii) the statements related to customer funds that the Commission requires to be held in segregated accounts in accordance with Section 4d of the Commodity Exchange Act, or in secured accounts in accordance with Part 30 of the Commission's regulations.[49] Such information provides insight into the financial resources of an FCM relative to its aggregate obligations and assures that market users may assess the financial integrity of the intermediaries they employ in their trading activities.

Accordingly, the Commission proposes to amend Rules 145.5 and 147.3 to exempt from mandatory public disclosure, pursuant to FOIA exemption 8,[50] the following specific categories of information, except as provided for in Rules 1.10(g) and 31.13:

(1) Forms 1–FR required to be filed pursuant to Rule 1.10;

(2) FOCUS reports that are filed in lieu of Forms 1–FR pursuant to Rule 1.10(h);

(3) Forms 2–FR[51] required to be filed pursuant to Rule 31.13; and

(4) All reports and statements required to be filed pursuant to Rule 1.17(c)(6).[52]

[49] Rule 1.10(g) currently provides, and will continue to provide, that all information on Forms 1–FR and FOCUS reports that is nonpublic will be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Rule 1.10(g) also specifies that the rule does not limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

[50] Certain of this information would continue to be exempt from disclosure under FOIA exemption 4 as well.

[51] Rule 31.13 requires leverage transaction merchants ("LTMs") to file with the Commission financial condition information using "Forms 2–FR," and provides that certain information in such reports shall be deemed public. For a number of years there have been no registered LTMs, and the Commission is not proposing any amendments to Rule 31.13 in this release.

[52] The accountant's report on material inadequacies filed in accordance with Rule 1.16(c)(5), which is already included in Rules 145 and 147 as exempt from disclosure under FOIA Exemption 4, would also be included as exempt from disclosure under FOIA Exemption 8.

IV. Proposed Amendment To Reduce Capital Charges for Foreign Currency Forwards and Inventory in Specified Currencies

The Commission is further proposing to amend Commission Rule 1.17(c)(5)(ii), pursuant to which an FCM or IB, in computing its adjusted net capital, must deduct from its net capital specified percentages of the market value of its inventory, fixed price commitments and forward contracts. Such capital charges, which are imposed in percentages of up to twenty percent of market value, are reduced if the FCM's or IB's inventory, fixed price commitments or forward contracts are covered (*i.e.*, hedged) by an open futures contract or commodity option.[53] For example, the capital charge for a forward contract that is covered by an open futures contract is ten percent, which is less than the twenty percent capital charge applied to an uncovered forward contract. Rule 1.17(c)(5)(ii) also includes a proviso that eliminates any capital charge for inventory and forward contracts that are in a foreign currency purchased or sold for future delivery on or subject to the rules of a contract market, and which are covered by an open futures contract.

The Commission provides written instructions to assist FCMs in the preparation of their Form 1–FR reports ("Form 1–FR–FCM Instructions Manual").[54] As described in the Form 1–FR–FCM Instructions Manual, those assets, liabilities, forward contracts, and fixed price commitments of an FCM or IB that are denominated in the same foreign currency are to be factored together, and any net balance that is not covered is subject to a capital charge. The Form 1–FR–FCM Instructions Manual further provides that the applicable capital charge is twenty percent unless such uncovered net foreign currency balances are in euros, British pounds, Japanese yen, Canadian dollars, and Swiss francs, in which case the capital charge is six percent. This reduced capital charge is less than that strictly called for by Commission Rule 1.17(c)(5)(ii), which would require an FCM to take a twenty percent charge, but is consistent with similar capital charges that BDs are required to deduct from their net capital under SEC regulations. The New York Stock Exchange Interpretation Handbook ("NYSE Handbook"), which provides general guidance for the financial reports prepared by BDs, instructs them to treat uncovered balances in foreign currencies as "inventory," and to take a six percent capital charge for balances held in seven identified foreign currencies, and a twenty percent capital charge for other foreign currencies.[55] In support of this instruction, the NYSE Handbook cites a 1986 SEC no-action letter that lists certain "major" non-U.S. currencies, and further equates the haircut for unhedged forward positions in such currencies with the haircut applicable to the unhedged underlying currency, which "is set at 6 [percent]."[56] The foreign currencies in the SEC letter include the same national currencies specified in the Commission's Form 1–FR–FCM Instructions Manual.[57]

As noted in the earlier summary of Rule 1.17(c)(5)(ii), there is no capital charge for the covered inventory and forward contracts of FCMs and IBs in foreign currencies that are purchased or sold for future delivery on, or subject to the rules of, a contract market. For all inventory and forward contracts that are not covered, however, Rule 1.17(c)(5)(ii) establishes a capital charge of twenty percent, and the Commission therefore proposes to amend the rule by adding a provision that would specify a capital charge of six percent for uncovered inventory and forward contracts in euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs. Uncovered forward contracts and cash deposits in any other non-U.S. currency would remain subject to the capital charge of twenty percent currently set forth in the rule.

The Commission believes that the proposed amendment would be consistent with the reduced currency risk of these foreign currencies, given their stability relative to the U.S. dollar. The proposed amendment would also provide greater clarity and transparency to the Commission's capital rule, as currently the lower capital charge for the specified major non-U.S. currencies

[53] The term "cover," as used in the Commission's capital rule, is defined in Rule 1.17(j).

[54] An electronic copy of the "Instructions for Form 1–FR–FCM" is available to the public on the Commission's Web site, at *http://www.cftc.gov/files/tm/tminstructionsmanualfinalseptember2004.pdf*.

[55] *See NYSE Interpretation Handbook*, Interpretation /01 to Rule 15c3–1b(a)(3)(ix) (2003).

[56] Letter from Michael A. Macchiaroli, Division of Market Regulation, Securities and Exchange Commission, to Philadelphia Stock Exchange, Inc., February 14, 1986, (SEC Staff No Action Letter) reprinted at 1986 WL 67696. An SEC Commission release issued in 1993 also includes the statement that the charge applied to uncovered forward contracts in major currencies is 6 percent, and 20 percent for other currencies. *See* 58 FR 27486, fn. 34 (May 10, 1993).

[57] As of 2002, two of the national currencies referred to in the 1986 SEC Staff No Action Letter—the Deutschemark and the French franc—have been replaced as legal tender by the euro.

is set forth only in the Commission's Form 1–FR Instructions Manual.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[58] The Commission has determined previously that FCMs are not small entities for the purpose of the RFA.[59] With respect to IBs, the Commission has determined to evaluate within the context of a particular rule proposal whether all or some IBs would be considered "small entities" for purposes of the RFA and, if so, to analyze at that time the economic impact on IBs of any such rule.[60]

The Commission has previously determined, pursuant to 5 U.S.C. 605(b), that Part 145 rules relating to Commission records and information do not have a significant economic impact on a substantial number of small entities. Also, the proposed amendments to Rule 1.17(c)(6) would apply to FCMs only and therefore would have no economic impact on IBs. Because the proposed amendment to Rule 1.17(c)(5)(ii) reduces the capital charge that an IB would otherwise be required to incur under the Commission's existing regulations, the proposed amendment should have no adverse economic impact on an IB's financial operations.[61] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[62] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. Except for the proposed revision of Rule 1.17(c)(6), the other amendments being proposed would not, if approved, require a new collection of information on the part of any entities that would be subject to the proposed rule amendments. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget ("OMB") for its review.

Collection of Information. (Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024.)

Under the proposed amendment to Rule 1.17(c)(6), an FCM that voluntarily elects to use the Alternative Capital Computation would be required to file with the Commission a statement that includes information filed with its application to the SEC made under 17 CFR 240.15c3–1e, and would also be required to file copies of the monthly, quarterly and annual filings that BDs using SEC-approved alternative capital charges are required to file with the SEC. The collection of information required by Rule 1.17(c)(6) is necessary for the Commission's oversight of the FCM's compliance with its minimum financial requirements under the Commodity Exchange Act and implementing regulations of the Commission. The Commission estimates that as of September 2005, in addition to the two FCM/BDs that have already received approval orders from the SEC to use alternative capital charges, there are eight other FCM/BDs who may elect to use the alternative capital charges that would be permitted under the proposed Rule 1.17(c)(6).[63] Assuming that a total of ten FCM/BDs elect to use the Alternative Capital Computation, the Commission estimates a minimal increase in the annual reporting burden associated with OMB Collection of Information Control No. 3038–004, as each of these registrants can satisfy the Commission's filing requirements by filing copies of documents that the FCM/BD will be required to file with the SEC. The Commission has therefore determined that the proposed amendment to Rule 1.17(c)(6) would increase by 90 hours the total annual reporting burden associated with the above-referenced collection of information, which has been approved previously by OMB. Moreover, much of the required monthly information will be provided as schedules included in the Part II CSE FOCUS reports that FCM/BDs electronically file with both the Commission and the SEC. The estimated burden of the proposed amendments to Rule 1.17 was calculated as follows:

Estimated number of respondents: 10.

Reports annually by each respondent: 18.

Total annual responses: 180.

Estimated average number of hours per response: 0.5.

Annual reporting burden: 90.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160. The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing 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.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations 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 to the Commission on the proposed regulations.

[58] 47 FR 18618 (April 30, 1982).

[59] 47 FR at 18619.

[60] 47 FR at 18618, 18620.

[61] Moreover, many IBs are exempted from meeting the requirement to file financial Forms 1–FR under the provisions of Rule 1.10(b), which exempts those IBs that operate pursuant to an FCM guarantee agreement that satisfies the requirements of Rule 1.10(h). Generally, at least two-thirds of registered IBs operate pursuant to a guarantee agreement.

[62] 44 U.S.C. 3507(d).

[63] When adopting it new rules in June of 2004, the SEC's PRA analysis used an estimate of eleven BDs that would compute their net capital using the alternative market risk and credit risk deductions. 69 FR at 34451.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed amendment to Rule 1.17(c)(6) would permit FCM/BDs that meet the requirements of the proposed rule to compute their adjusted net capital using the same alternative capital deductions that have been approved by the SEC.[64] The proposed amendment to Rule 1.17(c)(5)(ii) would reduce a capital charge to which FCMs and IBs are subject under the Commission's current regulations. The Commission is considering the costs and benefits of these proposed rules in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed amendment to Rule 1.17(c)(6) provides the benefit of increasing the accuracy of the reflection of risks in the net capital charges for FCM/BDs approved for using the alternative net capital charges based on internal risk measurement tools, while bettering the Commission's ability to perform appropriate financial and risk oversight. Furthermore, as the proposed rule would be an option available to requesting FCM/BDs but not a requirement, the Commission considers that no FCM/BD will request to use the charges unless the costs of compliance would be outweighed by the benefits to such FCM/BD from using the alternative net capital charges.

2. *Efficiency and competition.* The Commission anticipates that the proposed amendment to Rule 1.17(c)(6) will benefit efficiency by eliminating a difference in the computation of net capital charges between the SEC and the CFTC for dually-registered FCM/BDs that have been approved by the SEC to use such charges. The proposed amendment to Rule 1.17(c)(5)(ii) will reduce the capital charges applicable to FCMs and IBs, which may therefore result in the more efficient utilization of their capital.

3. *Financial integrity of futures markets and price discovery.* The notification and reporting requirements in proposed Rule 1.17(c)(6) contribute to the benefit of ensuring that eligible FCMs can meet their financial obligations to customers and other market participants. Customers and other market participants would also benefit from the provisions in proposed Rule 1.10(g) that would continue to make publicly available certain information in Form 1–FR and FOCUS reports related to capital requirements and requirements for customer funds to be held in segregated or separate accounts. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function of such markets.

4. *Sound risk management practices.* The alternative capital computation permitted under proposed Rule 1.17(c)(6) is limited to FCMs who have in place an internal risk management system that expressly addresses market risk, credit risk, liquidity risk, legal risk and operational risks at the firm. The proposed rule also requires that the Commission receive copies of written reviews, which are to be prepared annually by registered public accountants, of the firm's internal risk management control system. The proposed amendment may therefore contribute to the sound risk management practices of futures intermediaries.

5. *Other public interest considerations.* The Commission also believes that the proposed amendment to Rule 1.17(c)(6) is beneficial in that it minimizes what would otherwise be a conflict between the Commission and SEC rules, which conflict would otherwise make the SEC's opportunity for qualifying BDs to use alternative net capital charges unavailable to dually registered FCM/BDs, despite the commonality of interest and purpose for the CFTC and SEC minimum net capital rules. The proposed amendment to Rule 1.17(c)(5)(ii), which will incorporate agency guidance not presently included in the Commission's regulations, will enhance the transparency of the Commission's rulemaking for FCMs and IBs.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 Part 145

Freedom of information.

17 Part 147

Sunshine Act.

Accordingly, 17 CFR Chapter I is proposed to be amended as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub.L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.10 is proposed to be amended by revising paragraphs (d)(4)(ii), (f)(1) introductory text, (g)(1), (g)(2), (g)(4), and (h) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(d) * * *

(4) * * *

(ii) If the registrant or applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, the representative authorized under § 240.17a–5 of this title to file for the securities broker or dealer its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE. In the

[64] Section 4f(b) of the Act prohibits persons from becoming registered as FCMs or IBs if they do not meet the minimum financial requirements set forth in either the Commission's regulations or in such Commission-approved requirements as may be established by the contract markets and derivatives transaction execution facilities of which the FCM or IB is a member.

case of a Form 1–FR filed via electronic transmission in accordance with procedures established by the Commission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(f) *Extension of time for filing uncertified reports.* (1) In the event a registrant finds that it cannot file its Form 1–FR, or, in accordance with paragraph (h) of this section, its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report), for any period within the time specified in paragraphs (b)(1)(i) or (b)(2)(i) of this section without substantial undue hardship, it may request approval for an extension of time, as follows:

* * * * *

(g) *Public availability of reports.* (1) Forms 1–FR filed pursuant to this section, and FOCUS reports filed in lieu of Forms 1–FR pursuant to paragraph (h) of this section, will be treated as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter, except for the information described in paragraph (g)(2) of this section.

(2) The following information in Forms 1–FR, and the same or equivalent information in FOCUS reports filed in lieu of Forms 1–FR, will be publicly available:

(i) The amount of the applicant's or registrant's adjusted net capital; the amount of its minimum net capital requirement under § 1.17 of this chapter; and the amount of its adjusted net capital in excess of its minimum net capital requirement; and

(ii) The following statements and footnote disclosures thereof: the Statement of Financial Condition in the certified annual financial reports of futures commission merchants and introducing brokers; the Statements (to be filed by a futures commission merchant only) of Segregation Requirements and Funds in Segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the Statement (to be filed by a futures commission merchant only) of Secured Amounts and Funds held in Separate Accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter.

(3) * * *

(4) All information that is exempt from mandatory public disclosure under paragraph (g)(1) of this section will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (g) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

* * * * *

(h) *Filing option available to a futures commission merchant or an introducing broker that is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report), in lieu of Form 1–FR: *Provided, however,* That all information which is required to be furnished on and submitted with Form 1–FR is provided with such FOCUS report.

* * * * *

3. Section 1.16 is proposed to be amended by revising paragraph (c)(5) to read as follows:

§ 1.16 Qualifications and reports of accountants.

* * * * *

(c) * * *

(5) *Accountant's report on material inadequacies.* A registrant must file concurrently with the annual audit report a supplemental report by the accountant describing any material inadequacies found to exist or found to have existed since the date of the previous audit. An applicant must file concurrently with the audit report a supplemental report by the accountant describing any material inadequacies found to exist as of the date of the Form 1–FR being filed: *Provided, however,* That if such applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, and it files (in accordance with § 1.10(h)) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE, in lieu of Form 1–FR, the accountant's supplemental report must be made as of the date of such report. The supplemental report must indicate any corrective action taken or proposed by the applicant or registrant in regard thereto. If the audit did not disclose any material inadequacies, the supplemental report must so state.

* * * * *

4. Section 1.17 is proposed to be amended by revising paragraph (c)(5)(ii) and adding (c)(6) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(5) * * *

(ii) In the case of all inventory, fixed price commitments and forward contracts, the applicable percentage of the net position specified as follows:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical.—No charge.

(B) Inventory which is covered by an open futures contract or commodity option.—5 percent of the market value.

(C) Inventory which is not covered.—20 percent of the market value.

(D) Inventory and forward contracts in those foreign currencies that are purchased or sold for future delivery on or subject to the rules of a contract market, and which are covered by an open futures contract.—No charge.

(E) Inventory and forward contracts in euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs, and which are not covered by an open futures contract or commodity option.—6 percent of the market value.

(F) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option.—10 percent of the market value.

(G) Fixed price commitments (open purchases and sales) and forward contracts which are not covered by an open futures contract or commodity option.—20 percent of the market value.

* * * * *

(6) Election of alternative capital deductions that have received approval of Securities and Exchange Commission pursuant to section 240.15c3–1(a)(7) of this title. (i) Any futures commission merchant that is also registered with the Securities and Exchange Commission as a securities broker or dealer, and who also satisfies the other requirements of

this paragraph (c)(6), may elect to compute its adjusted net capital using the alternative capital deductions that, under section 240.15c3–1(a)(7) of this title, the Securities and Exchange Commission has approved for it by written order. To the extent that a futures commission merchant is permitted by the Securities and Exchange Commission to use alternative capital deductions for its unsecured receivables from over-the-counter transactions in derivatives, or for its proprietary positions in securities, forward contracts, or futures contracts, the futures commission merchant may use these same alternative capital deductions when computing its adjusted net capital, in lieu of the deductions that would otherwise be required by paragraph (c)(2)(ii) of this section for its unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for its proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for its proprietary positions in securities; and by paragraph (c)(5)(x) of this section for its proprietary positions in futures contracts.

(ii) *Notifications of election or of changes to election.* (A) No election to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section shall be effective unless and until the futures commission merchant has filed with the Commission, addressed to the Director of the Division of Clearing and Intermediary Oversight, a notice that is to include a copy of the approval order of the Securities and Exchange Commission referenced in paragraph (c)(6)(i) of this section, and to include also a statement that identifies the amount of tentative net capital below which the futures commission merchant is required to provide notice to the Securities and Exchange Commission, and which also provides the following information: A list of the categories of positions that the futures commission merchant holds in its proprietary accounts, and, for each such category, a description of the methods that the futures commission merchant will use to calculate its deductions for market risk and credit risk, and also, if calculated separately, deductions for specific risk; a description of the value at risk (VaR) models to be used for its market risk and credit risk deductions, and an overview of the integration of the models into the internal risk management control system of the futures commission merchant; a description of how the futures commission merchant will calculate current exposure and maximum potential exposure for its deductions for credit risk; a description of how the futures commission merchant will determine internal credit ratings of counterparties and internal credit risk weights of counterparties, if applicable; and a description of the estimated effect of the alternative market risk and credit risk deductions on the amounts reported by the futures commission merchant as net capital and adjusted net capital.

(B) A futures commission merchant must also, upon the request of the Commission at any time, supplement the statement described in paragraph (c)(6)(ii)(A) of this section, by providing any other explanatory information regarding the computation of its alternative market risk and credit risk deductions as the Commission may require at its discretion.

(C) A futures commission merchant must also file the following supplemental notices with the Director of the Division and Clearing and Intermediary Oversight:

(*1*) A notice advising that the Securities and Exchange Commission has imposed additional or revised conditions for the approval evidenced by the order referenced in paragraph (c)(6)(i) of this section, and which describes the new or revised conditions in full, and

(*2*) A notice which attaches a copy of any approval by the Securities and Exchange Commission of amendments that a futures commission merchant has requested for its application, filed under 17 CFR 240.15c3–1e, to use alternative market risk and credit risk deductions approved by the Securities and Exchange Commission.

(D) A futures commission merchant may voluntarily change its election to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section, by filing with the Director of the Division of Clearing and Intermediary Oversight a written notice specifying a future date as of which it will it no longer use the alternative market risk and credit risk deductions, and will instead compute such deductions in accordance with the requirements otherwise applicable under paragraph (c)(2)(ii) of this section for unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for proprietary positions in securities; and by paragraph (c)(5)(x) of this section for proprietary positions in futures contracts.

(iii) *Conditions under which election terminated.* A futures commission merchant may no longer elect to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section, and shall instead compute the deductions otherwise required under paragraph (c)(2)(ii) of this section for unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for proprietary positions in securities; and by paragraph (c)(5)(x) of this section for proprietary positions in futures contracts, upon the occurrence of any of the following:

(A) The Securities and Exchange Commission revokes its approval of the market risk and credit risk deductions for such futures commission merchant;

(B) A futures commission merchant fails to come into compliance with its filing requirements under this paragraph (c)(6), after having received from the Director of the Division of Clearing and Intermediary Oversight written notification that the futures commission merchant is not in compliance with its filing requirements, and that it must cease using the alternative capital deductions permitted under this paragraph (c)(6) if it has not come into compliance by a date specified in the notice; or

(C) The Commission by written order finds that permitting the futures commission merchant to continue to use such alternative market risk and credit risk deductions is no longer necessary or appropriate for the protection of customers of the futures commission merchant or of the integrity of the futures or options markets.

(iv) *Additional filing requirements.* Any futures commission merchant that elects to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section must file with the Commission, in addition to the filings required by paragraph (c)(6)(ii) of this section, copies of any and all of the following documents, at such time as the originals are filed with the Securities and Exchange Commission:

(A) Information that the futures commission merchant files on a monthly basis with its designated examining authority or the Securities and Exchange Commission, whether by way of schedules to its FOCUS reports or by other filings, in satisfaction of 17 CFR 240.17a–5(a)(5)(i);

(B) The quarterly reports required by 17 CFR 240.17a–5(a)(5)(ii);

(C) The supplemental annual filings as required by 17 CFR 240.17a–5(k);

(D) Any notification to the Securities and Exchange Commission or the futures commission merchant's designated examining authority of planned withdrawals of excess net capital; and

(E) Any notification that the futures commission merchant is required to file with the Securities and Exchange Commission when its tentative net capital is below an amount specified by the Securities and Exchange Commission.

* * * * *

5. Section 1.18 is proposed to be amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1–FR–FCM or Form 1–FR–IB, respectively, or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report) in lieu of Form 1–FR–FCM or Form 1–FR–IB, the account classification subdivisions specified on such Report, or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b) * * *

(2) An applicant or registrant that has filed a monthly Form 1–FR or Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report) in accordance with the requirements of § 1.10(b) will be deemed to have satisfied the requirements of paragraph (b)(1) of this section for such month.

* * * * *

6. Section 1.52 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c): *Provided, however,* A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE, in lieu of Form 1–FR: And, *provided further,* A designated self-regulatory organization may permit its member introducing brokers to file a Form 1–FR–IB in lieu of a Form 1–FR–FCM.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

7. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

8. Section 145.5 is proposed to be amended by revising paragraphs (d)(1) and (h) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential, including, but not limited to:

(1)(i) Reports of stocks of grain, such as Forms 38, 38C, 38M and 38T required to be filed pursuant to 17 CFR 1.44;

(ii) Statements of reporting traders on Form 40 required to be filed pursuant to 17 CFR 18.04;

(iii) Statements concerning special calls on positions required to be filed pursuant to 17 CFR part 21;

(iv) Statements concerning identification of special accounts on Form 102 required to be filed pursuant to 17 CFR 17.01;

(v) Reports required to be filed pursuant to parts 15 through 21 of this chapter;

(vi) Reports concerning option positions of large traders required to be filed pursuant to part 16 of this chapter;

(vii) Form 188; and

(viii) The following reports and statements that are also set forth in paragraph (h) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(h) Contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (d)(1)(viii) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

9. The authority citation for part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

10. Section 147.3 is proposed to be amended by revising paragraphs (b)(4)(i) and (b)(8) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4)(i) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential including, but not limited to:

(A) Reports of stocks of grain, such as Forms 38, 38C, 38M and 38T, required to be filed pursuant to 17 CFR 1.44;

(B) Statements of reporting traders on Form 40 required to be filed pursuant to 17 CFR 18.04;

(C) Statements concerning special calls on positions required to be filed pursuant to 17 CFR part 21;

(D) Statements concerning identification of special accounts on Form 102 required to be filed pursuant to 17 CFR 17.01;

(E) Reports required to be filed pursuant to parts 15 through 21 of this chapter;

(F) Reports concerning option positions of large traders required to be filed pursuant to part 16 of this chapter;

(G) Form 188; and

(H) The following reports and statements that are also set forth in paragraph (b)(8) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (b)(4)(i)(H) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

Issued in Washington, DC, on October 4, 2005 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–20258 Filed 10–7–05; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN–0960–AE93

Exemption of Work Activity as a Basis for a Continuing Disability Review

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to amend our regulations to include rules to carry out section 221(m) of the Social Security Act (the Act). Section 221(m) affects our rules for when we will conduct a continuing disability review if you work and receive benefits under title II of the Act based on disability. (We interpret this section to include you if you receive both title II disability benefits and Supplemental Security Income (SSI) payments based on disability.) It also affects our rules on how we evaluate work activity when we decide if you have engaged in substantial gainful activity for purposes of determining whether your disability has ended. In addition, section 221(m) of the Act affects certain other standards we use when we determine whether your disability continues or ends. We are also proposing to make certain other revisions to our regulations for how we determine whether your disability continues or ends. These other proposed revisions would codify our existing operating instructions for how we consider certain work at the last two steps of our continuing disability review process. In addition, we are proposing to incorporate into our disability regulations some rules which are contained in another part of our regulations and which apply if you are using a ticket under the Ticket to Work and Self-Sufficiency program (the Ticket to Work program). Finally, we are proposing to amend our regulations to eliminate the secondary substantial gainful activity amount that we currently use to evaluate work you did as an employee before January 2001.

DATES: To be sure that your comments are considered, we must receive them by December 12, 2005.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal: *http://www.regulations.gov;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov/regulations/.*

FOR FURTHER INFORMATION CONTACT: Kristine Erwin-Tribbitt, Policy Analyst, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. Call (410) 965–3353 or TTY (410) 966–5609 for information about these proposed rules. For information on eligibility or filing for benefits, call our national toll-free number 1 (800) 772–1213 or TTY 1 (800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION:

What is the purpose of this notice of proposed rulemaking (NPRM)?

In this NPRM, we propose to amend our disability regulations to carry out section 221(m) of the Act. These proposed changes would apply to you if you are a working beneficiary who is entitled to Social Security disability benefits under title II of the Act and you have received such benefits for at least 24 months. If you are a person who meets these requirements, we propose to change our rules on when we will start a continuing disability review to decide whether you are still disabled. In addition, we propose to amend our rules to provide that, under the medical

improvement review standard sequential evaluation process, we will not consider the activities you perform in your work if they support a finding that you are no longer disabled. We also propose to amend our regulations to provide that we will not use the activities you perform in work to support a finding that you are no longer disabled when deciding if the work you do shows that you are able to perform substantial gainful activity. Specifically we will not compare your work activity to that of unimpaired people in your community who are doing the same or similar work as their means of livelihood. Also, if your earnings are less than the substantial gainful activity limit, we will not make a determination that your work is worth more than the substantial gainful activity amount.

In this NPRM, we also propose to make certain other changes to our regulations that may apply to you even if you are not affected by section 221(m) of the Act. We are proposing to clarify our rules for how we consider work activity at the last two steps of the medical improvement review standard sequential evaluation process when we determine if you are still disabled. The proposed rules will codify in our regulations interpretations of our standards for determining whether disability continues under title II and title XVI that we have been using in operating instructions for some time. These proposed rules also provide that these interpretations apply when we determine whether you are entitled to expedited reinstatement of benefits under section 223(i) of the Act or eligible for expedited reinstatement of benefits under section 1631(p) of the Act. The proposed changes affect you if you are entitled to Social Security benefits based on disability under title II or you are an adult who is eligible for SSI payments based on disability under title XVI and you work during your current period of entitlement or eligibility based on disability. Also, the proposed rules affect you if you request reinstatement of benefits.

We are also proposing to incorporate into our disability regulations some rules which are contained in another part of our regulations and which apply to you if you are using a ticket under the Ticket to Work program. In addition, we are proposing to revise our rules for evaluating work activity you performed as an employee prior to January 2001 to eliminate the use of the secondary substantial gainful activity amount. We are also proposing to make some minor clarifications and corrections of other rules.

Ticket to Work and Work Incentives Advisory Panel

During the preparation of these proposed rules, we consulted with the Ticket to Work and Work Incentives Advisory Panel.

When will we start to use these rules?

We will not use these rules until we evaluate the public comments we receive on them and issue final rules in the **Federal Register**. If we publish final rules, we will state in the notice the date on which they go into effect, explain in the preamble how we will apply them, and summarize and respond to the substantive public comments.

What are continuing disability reviews and when do we start them?

After we find that you are disabled, we are required by the Act and our regulations to periodically reevaluate whether you continue to meet the disability requirements of the Act. (*See* sections 221(i) and 1631(d)(1) and 1633 of the Act, and §§ 404.1589 and 416.989 of our regulations.) We call this evaluation a continuing disability review. In §§ 404.1590 and 416.990 of our regulations, we explain that, if you are entitled to or eligible for disability benefits, you must undergo regularly scheduled continuing disability reviews. We also explain that in some circumstances, we may start a continuing disability review before the time of your regularly scheduled continuing disability review.

In §§ 404.1590(b) and 416.990(b) of our regulations, we list circumstances in which we will start a continuing disability review. In most cases, we start a continuing disability review because, under the Act and our regulations, we must evaluate your impairment(s) from time to time to determine if you are still entitled to Social Security disability benefits or eligible for SSI payments based on disability or blindness. If you are entitled to or eligible for such benefits, you are subject to regularly scheduled continuing disability reviews at intervals ranging from 6 months to 7 years depending on whether, and the degree to which, we expect your impairment(s) to improve.

We may also start a continuing disability review because you returned to work, and at other times when we receive information that raises questions about whether you are still under a disability, such as when you complete vocational rehabilitation services. For more information about how we decide the frequency of continuing disability reviews and when we may start a continuing disability review at other than scheduled times, see §§ 404.1590 and 416.990 of our current regulations.

How do we determine whether your disability continues or ends?

When we do a continuing disability review to determine whether your disability continues or ends, we use the rules in § 404.1594 if you are a Social Security disability beneficiary and the rules in § 416.994 if you are an adult who is eligible for SSI payments based on disability. In general, these rules provide that we must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. The rules in these sections also provide some exceptions to this medical improvement review standard.

In § 404.1594(f), we provide an eight-step sequential evaluation process that we use when we determine whether you are still disabled under title II of the Act. We generally follow the steps in order. However, we may also find that your disability has ended because of one of several exceptions to the medical improvement review standard described in §§ 404.1594(d) and (e). (Since the exceptions are in the statute and are not affected by section 221(m) or the proposals in this NPRM, we do not summarize them below.) The eight steps are as follows:

1. Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find that your disability ended.

2. If you are not, do you have an impairment or combination of impairments that meets or equals the severity of an impairment in our Listing of Impairments? If you do, we will generally find that your disability continues.

3. If you do not, has there been medical improvement? If there has been medical improvement as shown by a decrease in the medical severity of your impairment(s), we go on to step 4. If there is no medical improvement in your impairment(s), we skip to step 5.

4. If there has been medical improvement, we must determine whether it is related to your ability to do work. If medical improvement is *not* related to your ability to do work, we go on to step 5. If medical improvement is related to your ability to do work, we skip to step 6.

5. If we found at step 3 that there has been no medical improvement, or if we found at step 4 that the medical improvement is not related to your ability to work, we consider whether one of the exceptions to medical

improvement applies in your case. If none of the exceptions to medical improvement applies, we find that your disability continues. However, if one of the exceptions applies, we will find either that your disability has ended or that we need to go on to step 6, depending on the exception that applies in your case.

6. If medical improvement is related to your ability to do work, or if any one of certain exceptions to medical improvement applies, we will determine whether all of your current impairments in combination are "severe" (see § 404.1521 of our regulations). If you do not have a "severe" impairment(s), we will find that your disability has ended.

7. If your impairment(s) is "severe," we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, we will find that your disability has ended.

8. If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

We also use this medical improvement review standard to review your continuing eligibility if you are an adult who receives SSI payments based on disability. The sequential evaluation process is in § 416.994(b)(5) of our regulations, but it has only seven steps instead of eight. The seven steps are the same as the second through eighth steps of § 404.1594(f). We do not have a step for you if you are engaging in substantial gainful activity because of an SSI work incentive provision in section 1619 of the Act.

What is substantial gainful activity?

The term "substantial gainful activity" means work activity that involves significant physical or mental activities and that is done for pay or profit. Work activity is gainful if it is the kind of work usually performed for pay or profit, whether or not a profit is realized.

When will your performance of substantial gainful activity affect whether you continue to be disabled?

If you are entitled to Social Security benefits based on disability and you are working, the work you do may show that you are able to do substantial gainful activity and are, therefore, no longer disabled. If you are engaging in substantial gainful activity, before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period under § 404.1592. We will find that your disability has ceased in the month in which you demonstrated your ability to engage in substantial gainful activity following completion of any applicable trial work period. See §§ 404.1594(d)(5) and (f)(1) of our regulations. Our determination that your disability has ceased because you demonstrated the ability to engage in substantial gainful activity is not a determination of whether you continue to have a disabling impairment (see § 404.1511) for purposes of eligibility for a reentitlement period (see § 404.1592a) following completion of a trial work period. If you work during your reentitlement period and we determine that your disability has ceased because your work is substantial gainful activity, we will stop your benefits. If you later stop engaging in substantial gainful activity and you are still within your reentitlement period, we will start paying your benefits again. In determining whether you do substantial gainful activity in a month for purposes of stopping or starting benefits during the reentitlement period, we will consider your work in, or earnings for, that month (see § 404.1592a(a)(2)(i)).

If you are receiving SSI benefits based on disability, your performance of substantial gainful activity does not affect your disability status for purposes of eligibility for SSI benefits. This is because of an SSI work incentive provision in section 1619 of the Act.

How do we evaluate your work as an employee to determine if you are engaging in substantial gainful activity?

If you work as an employee, we generally use earnings guidelines to evaluate your work activity to decide whether the work you do is substantial gainful activity. If your average monthly earnings are more than the primary substantial gainful activity amount (*i.e.*, $810 per month for non-blind individuals in 2004), we ordinarily consider that you have engaged in substantial gainful activity. If your average monthly earnings from your work activity are equal to or less than the primary substantial gainful activity amount for the year(s) in which you work, the way we evaluate your work activity will generally depend on whether the work occurred in or after January 2001 or before January 2001.

For work occurring between January 1, 1990 and January 1, 2001, if your average monthly earnings from your work activity were less than $300, we generally consider that your earnings show that you have not engaged in substantial gainful activity. With certain exceptions, we generally do not consider other information beyond your earnings. We refer to this $300 earnings guideline as the secondary substantial gainful activity amount to distinguish it from the primary substantial gainful activity amount. If your earnings were between the primary ($700 per month for work occurring between July 1, 1999 and January 1, 2001) and secondary substantial gainful activity levels, our rules provide that such earnings are neither high nor low enough to show whether you have engaged in substantial gainful activity. In these circumstances, we use separate criteria to evaluate your work as an employee to determine if you engaged in substantial gainful activity. If you worked in a sheltered workshop or comparable facility before January 1, 2001, earnings not greater than the primary substantial gainful activity amount ordinarily establish that the work was not substantial gainful activity.

Beginning with January 2001, if your average monthly earnings are equal to or less than the primary substantial gainful activity amount, we generally consider that your earnings show that you have not engaged in substantial gainful activity. Except in certain circumstances, we generally do not consider other information in addition to your earnings.

Therefore, if you worked from July 2000 through June 2001, with earnings of $600 per month, we use separate criteria to determine if you engaged in substantial gainful activity. For work activity from January 2001 through June 2001, your average monthly earnings are less than the primary substantial gainful activity amount ($740 per month for work occurring between January 1, 2001 and January 1, 2002), we will generally consider that your earnings show that you have not engaged in substantial gainful activity. For work activity from July 2000 through December 2000, your earnings were between the primary ($700 per month for work occurring between July 1, 1999 and January 1, 2001) and secondary ($300 per month for work occurring between January 1, 1990 and January 1, 2001) substantial gainful activity levels, your earnings are neither high nor low enough to show whether you have engaged in substantial gainful activity. We will use separate criteria, such as the work you did, the hours you worked, and the amount of assistance you received, to evaluate your work to determine if you engaged in substantial gainful activity.

Are earnings guidelines the only factor used to determine if your work as an employee is substantial gainful activity?

As we have indicated above, in some instances, earnings guidelines are not the only factor we used to determine if the work you are performing is substantial gainful activity. In some cases we will consider other information if there is evidence which shows that you may have engaged in substantial gainful activity. In these instances, we evaluate your work activity under the criteria described below to determine if you have engaged in substantial gainful activity. We may determine that you have engaged in substantial gainful activity if your work activity satisfies either of the following set of criteria:

- Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; or
- Your work, although significantly less than that done by unimpaired people, is clearly worth more than the substantial gainful activity amount, according to pay scales in your community.

What factors are used to determine if your work as a self-employed person is substantial gainful activity?

We consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity. To determine whether you have engaged in substantial gainful activity, we apply three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(1) Test One: You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. (See § 404.1575(b) and (c) for an explanation of what we mean by significant services and substantial income for purposes of this test.)

(2) Test Two: You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) Test Three: You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth more than the substantial gainful activity amount when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

What does section 221(m) of the Act provide?

Section 221(m) contains two paragraphs. Paragraph (1) provides that, if you are entitled to disability insurance benefits under section 223 of the Act or to other monthly insurance benefits based on disability under section 202 of the Act,[1] and you have received such benefits for at least 24 months:

- We may not schedule a continuing disability review for you solely as a result of your work activity (section 221(m)(1)(A));
- We may not use your work activity as evidence that you are no longer disabled (section 221(m)(1)(B)); and
- If you stop working, we may not presume that you are unable to work just because you stopped working (section 221(m)(1)(C)).

Paragraph (2) explains that, if you are an individual described in paragraph (1):

- You are still subject to regularly scheduled continuing disability reviews that are not triggered by work (section 221(m)(2)(A)); and
- We may still terminate your benefits if you have earnings that exceed the level of earnings that represent substantial gainful activity (section 221(m)(2)(B)).

What revisions are we proposing to make, and why?

We propose to revise several of our rules in subparts J and P of part 404 and subparts I and N of part 416 of our regulations:

- To explain that we will not start a continuing disability review based solely on your work activity if you are covered by section 221(m) of the Act;
- To incorporate rules about not starting a continuing disability review that are contained in another part of our regulations and apply to you if you are using a ticket under the Ticket to Work program;
- To explain how we consider activities from work in continuing disability reviews if you are covered by section 221(m);
- To clarify how we determine continuing disability at the last two steps of the medical improvement review standard sequential evaluation process if you are not covered by section 221(m);
- To explain how we evaluate your work when we decide whether you have engaged in substantial gainful activity for purposes of determining whether your disability has ceased, if you are covered by section 221(m);
- To explain that our action to start or to discontinue a continuing disability review is not an initial determination; and
- To eliminate the use of the secondary substantial gainful activity amount for evaluating work done by an employee before January 2001.

Although section 221(m) applies only if you receive disability benefits under title II of the Act, we are proposing changes in our title XVI regulations that would apply to you if:

- You are entitled to Social Security disability benefits under title II of the Act;
- You are subject to the provisions of section 221(m) because you have received the Social Security disability benefits for at least 24 months; and
- You are also eligible for SSI benefits based on disability or blindness under title XVI of the Act.

If you meet these criteria, we are proposing to use the same rules for starting continuing disability reviews under title XVI as we propose to use under title II. Also, when we do conduct a continuing disability review, we are proposing to use the same rules on how we consider the activities from your work in a continuing disability review under title XVI as we propose to use in a continuing disability review under title II. If we did not propose these changes to the title XVI regulations, we would have rules under which we could start a continuing disability review based solely on your work activity to determine whether your disability continues or ends under title XVI even though we could not start a continuing disability review on that basis to determine whether your disability continues or ends under title II. Also, when we do conduct continuing disability reviews for both title II and title XVI purposes, we would have different rules on how we consider the activities from your work for title II and title XVI purposes. As a result, we could determine that your disability continues under title II but that your disability has ended under title XVI. For these reasons, we are proposing the

[1] The other monthly insurance benefits based on disability under section 202 of the Act are:

- Child's insurance benfits based on disability under section 202(d);
- Widow's insurance benefits based on disability under section 202(e); and
- Widower's insurance benefits based on disability under section 202(f).

aforementioned changes to the title XVI regulations that would apply to you if you are a recipient of SSI benefits based on disability or blindness and also are a Social Security disability beneficiary who is covered by section 221(m) of the Act. We concluded that this is a reasonable interpretation of the statute and the most logical, equitable, and administratively efficient way to implement section 221(m) if you receive both types of benefits.

We do not interpret section 221(m) of the Act to apply to you if you are a recipient of SSI benefits only. Section 221(m) provides that, for you to be covered by that section, you must be entitled to and have received Social Security disability benefits under title II. Therefore, these proposed rules do not extend the provisions of section 221(m) to you if you receive only SSI disability or blindness payments.

We are also proposing to include in our disability regulations rules that are already in subpart C of part 411 of our regulations and that apply to you if you are in the Ticket to Work program and using your ticket. These rules provide that we will not start a continuing disability review for you during the period in which you are using a ticket. However, they also explain that we can still do a review to determine if your disability has ended under title II because you have demonstrated your ability to engage in substantial gainful activity, as defined in §§ 404.1571–404.1576 of our regulations.

In these proposed rules, we are also clarifying that if you are entitled to Social Security disability benefits under title II or eligible for SSI disability payments under title XVI, we will not consider the work that you are doing or have done during your current period of entitlement or eligibility based on disability to be past relevant work or past work experience at the last two steps of the applicable medical improvement review standard sequential evaluation process. We are also proposing to provide a comparable rule if you are requesting expedited reinstatement of benefits under section 223(i) or 1631(p) of the Act. The proposed rule would apply at the last two steps to work you do during or after your previous period of entitlement or eligibility which terminated and which is the basis for your request for expedited reinstatement.

The following is an explanation of the specific changes we are proposing and our reasons for making these proposals.

Sections 404.903 and 416.1403 Administrative actions that are not initial determinations. We propose to add a new paragraph (x) to § 404.903 and a new paragraph (a)(22) to § 416.1403 to explain that the action of starting or discontinuing a continuing disability review is not an initial determination. As explained in existing §§ 404.903 and 416.1403(a), administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of part 404 or subpart N of part 416 of our regulations, and they are not subject to judicial review. If we start a continuing disability review based solely on your work activity, we will provide an opportunity for you to request that we review that action if you believe that you are protected by the section 221(m)(1)(A) provision and that the medical review should not have been started. We will inform you of this opportunity when we send you a letter telling you that we are starting a medical continuing disability review. If we review the action and conclude that the initiation of the continuing disability review was in error because section 221(m)(1)(A) of the Act applies, we will discontinue processing the continuing disability review. In addition, as we explain later in this preamble, if we process the continuing disability review to completion and make a medical cessation determination, we are proposing rules in §§ 404.1590 and 416.990 to provide a procedure under which we will vacate the medical cessation determination if, within a prescribed time period, we receive evidence from you that establishes that the start of your continuing disability review was in error because of section 221(m)(1)(A) of the Act.

Sections 404.1574 and 416.974 Evaluation guides if you are an employee. We propose to revise §§ 404.1574(b) and 416.974(b) to remove the rules relating to the use of the secondary substantial gainful activity amount for evaluating work activity you performed as an employee prior to January 2001. This proposed change would eliminate the difference that exists between the way we evaluate work you performed as an employee before January 2001 and the way we evaluate work you performed as an employee in months beginning with January 2001 in cases in which your average monthly earnings from your work are equal to or less than the applicable primary substantial gainful activity amount.

On December 29, 2000, we published final rules in the **Federal Register** (65 FR 82905) to discontinue the use of a secondary substantial gainful activity amount effective for work activity in months beginning with January 2001. We made this change because, as we explained in the preamble to those final rules, "our experience suggests that the secondary substantial gainful activity amount has not been as useful a tool as we would have liked" (65 FR 82906). We indicated that our experience suggests that few applicants and beneficiaries would be affected by the change because few employees have been found to have performed substantial gainful activity on the basis of the secondary rules except in those circumstances that would otherwise warrant development of other information beyond earnings. We also explained that "[d]iscontinuing these complex secondary guidelines will help simplify our rules and facilitate public understanding of the Social Security disability program as well as improve our work efficiency" (65 FR 82906). For these same reasons, and to provide consistent rules for considering earnings from your work as an employee, without regard to whether the work was performed before January 2001 or in or after January 2001, we are proposing to discontinue the use of the secondary guidelines altogether.

Under this proposed change, if your average monthly earnings from work you performed as an employee before January 2001 are equal to or less than the applicable primary substantial gainful activity amount, we will consider your earnings in the same way we consider earnings from work performed by an employee in or after January 2001 that do not average more than the applicable primary substantial gainful activity amount. That is, we will generally consider that your earnings from your work will show that you have not engaged in substantial gainful activity without considering other information beyond your earnings. We will perform additional development beyond looking at earnings only when circumstances indicate that you may have been engaging in substantial gainful activity or might have been in a position to control when earnings are paid to you or the amount of wages paid to you; (for example, if you are self-employed or work for a small corporation run by a relative). Therefore, if you worked from July 2000 through June 2001, with earnings of $600 per month, your average monthly earnings are less than the primary substantial gainful activity amount ($740 per month for work occurring between January 1, 2001 and January 1, 2002 and $700 per month for work occurring between July 1, 1999 and January 1, 2001), we will generally

consider that your earnings show that you have not engaged in substantial gainful activity.

To make this change, we are proposing to eliminate the rules in §§ 404.1574(b) and 416.974(b) relating to the use of the secondary substantial gainful activity amount and the distinction between work performed before January 2001 and work performed in or after January 2001. We propose to replace existing paragraphs (b)(3) through (b)(6) of §§ 404.1574 and 416.974 with a new paragraph (b)(3), *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* In proposed new paragraph (b)(3), we propose to consolidate our existing rules that apply in cases in which average monthly earnings from work performed by an employee (including work performed in a sheltered workshop or comparable facility) in or after January 2001 are equal to or less than the applicable primary substantial gainful activity amount, and to extend the scope of these rules to cover work performed before January 2001 as well as work performed in or after January 2001.

In proposed new paragraph (b)(3)(i), *General*, we state the general rule. We explain that if your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of § 404.1574 or § 416.974 for the year(s) in which you work, we will generally consider that the earnings from your work activity as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We explain that we will generally not consider other information in addition to your earnings except in the circumstances described in proposed new paragraph (b)(3)(ii) of §§ 404.1574 and 416.974.

In proposed new paragraph (b)(3)(ii), *When we will consider other information in addition to your earnings*, we describe those circumstances in which we will ordinarily consider other information beyond your earnings. We explain that we will generally consider other information in addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to control when earnings are paid to you or the amount of wages paid to you; (for example, if you are self-employed or working for a small corporation owned by a relative).

We also include provisions in proposed new paragraph (b)(3)(ii) that provide examples of other information we may consider. These latter provisions incorporate the provisions of existing paragraph (b)(6)(iii) of §§ 404.1574 and 416.974. In proposed new paragraphs (b)(3)(ii)(A) and (B), we explain that other information we may consider includes, for example, whether; (A) your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; and (B) your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of § 404.1574 or § 416.974, according to pay scales in your community.

The provisions of proposed §§ 404.1574(b)(3)(i) and (ii) and 416.974(b)(3)(i) and (ii) are based on the rules that are stated in the first sentence of existing paragraph (b)(3), the last sentence of existing paragraph (b)(4), existing paragraph (b)(5), and existing paragraphs (b)(6)(ii) and (iii) of §§ 404.1574 and 416.974.

In addition, we propose to include certain provisions in proposed § 404.1574(b)(3) that we are not including in proposed § 416.974(b)(3). In proposed § 404.1574(b)(3), we propose to include a paragraph (b)(3)(iii), *Special rule for considering earnings alone when evaluating the work you do after you have received social security disability benefits for at least 24 months*, to state a rule that may apply to you if you are covered by section 221(m) of the Act and you perform work as an employee. The rule in proposed § 404.1574(b)(3)(iii) provides an exception to the rule in proposed § 404.1574(b)(3)(ii), discussed above, which describes those circumstances in which we may consider other information in addition to your earnings, such as the comparability and value of services (proposed § 404.1574(b)(3)(ii)(A) and (B)). The exception would apply when we are evaluating the work that you perform while you are entitled to Social Security disability benefits and you have received such benefits for at least 24 months. The exception would apply only if we are evaluating that work to decide whether the work shows that you are able to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity. In this case, even if the circumstances described in proposed § 404.1574(b)(3)(ii) are present, we will not consider other information in addition to your earnings. Instead, we will apply the general rule described in proposed § 404.1574(b)(3)(i). That is, in the case described above, if your average monthly earnings from that work are equal to or less than the amount(s) determined under § 404.1574(b)(2) for the year(s) in which that work occurs, we will find that your earnings from that work will show that you have not engaged in substantial gainful activity.

If you are entitled to Social Security disability benefits and you perform work as an employee after you have received such benefits for at least 24 months, we interpret section 221(m)(1)(B) of the Act to provide that we may not consider information about the activities you perform in that work (such as the information described in proposed § 404.1574(b)(3)(ii)(A) and (B)) to determine that the work shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled, *i.e.*, that your disability has ceased. We may still consider your earnings from that work under the earnings guidelines to decide whether your earnings show that you have engaged in substantial gainful activity for the purpose of determining whether your disability has ceased. Also, we may still consider other information in addition to your earnings in the circumstances described in § 404.1574(b)(3)(ii) to decide whether that work is substantial gainful activity for purposes other than the purpose of determining whether your disability has ceased.

In proposed § 404.1574(b)(3)(iii), we explain that, even if the circumstances described in proposed § 404.1574(b)(3)(ii) are present, we will not consider other information in addition to your earnings in evaluating the work you are doing or have done if: (A) at the time you do the work, you are entitled to Social Security disability benefits and you have received such benefits for at least 24 months; and (B) we are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity. We include cross-references to the sections of our regulations that concern making substantial gainful activity determinations for purposes of determining whether your disability has ceased.

Also, in proposed § 404.1574(b)(3), we propose to include a paragraph (b)(3)(iv), *When we consider you to have received social security disability benefits for at least 24 months.* The

provisions of proposed paragraph (b)(3)(iv) apply for purposes of proposed paragraph (b)(3)(iii) of § 404.1574. In proposed § 404.1574(b)(3)(iv), we provide a definition of Social Security disability benefits. We explain that we consider you to have received such benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you received Social Security disability benefits that you were due. We state that the 24 months do not have to be consecutive. We explain that we do not count months for which you were entitled to benefits but for which you did not receive benefit payments, and we provide two examples. In addition, we explain that if you also receive SSI payments, months for which you received only SSI payments will not count for the 24-month requirement.

We are including proposed new paragraphs (b)(3)(iii) and (iv) only in our proposed revision of § 404.1574(b). We are not including similar provisions in our proposed revision of § 416.974(b) because the performance of substantial gainful activity is not a basis for determining that disability has ceased under the SSI program.

As we explain above, proposed new paragraph (b)(3) of §§ 404.1574 and 416.974 would replace existing paragraphs (b)(3) through (b)(6) of these sections. As a consequence, we propose to make certain conforming changes to paragraphs (b)(1) and (2) of §§ 404.1574 and 416.974. In paragraph (b)(1) of §§ 404.1574 and 416.974, we propose to remove references to paragraphs (b)(4), (5), and (6). In the introductory text of paragraph (b)(2) of §§ 404.1574 and 416.974, we propose to revise the parenthetical phrase to read, "(including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons)," to incorporate the description of sheltered work contained in existing paragraph (b)(4) of these sections.

Section 404.1575 Evaluation guides if you are self-employed. If you are covered by section 221(m) of the Act and you are self-employed, we propose to amend our rules in § 404.1575 to explain how we will evaluate your work activity when deciding whether you have engaged in substantial gainful activity following the completion of a trial work period for purposes of determining if your disability has ceased. (We are not proposing to amend our rules in § 416.975 because your performance of substantial gainful activity does not affect your disability status for purposes of your continuing eligibility for SSI payments.) As we explained earlier, if you are self-employed, we consider three tests to determine if you have engaged in substantial gainful activity. Since the three tests require us to consider your activities at work and their value to your business, we decided that we could not use these tests to decide that the work you do after you have received Social Security disability benefits for at least 24 months shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled. Based on section 221(m)(1)(B) of the Act, we concluded that we needed to provide a different test for considering whether that work is substantial gainful activity for purposes of determining whether your disability has ceased. Therefore, we are proposing to use a new evaluation test for that purpose. We refer to this new test as the countable income test.

To explain this new evaluation test and when we will apply it, we propose to revise paragraphs (a) and (c) of § 404.1575 and to add a new paragraph (e). We are retaining all of the provisions of existing paragraph (a). However, we are restructuring the paragraph. We propose to make the first two sentences of paragraph (a) the introductory text of that paragraph. (We propose to revise the first sentence of the paragraph to include a reference to proposed new paragraph (e).) We propose to include the remaining provisions of paragraph (a) in a new paragraph (a)(2), *General rules for evaluating your work activity if you are self-employed.* Because of this change, existing paragraphs (a)(1), (2), and (3) of § 404.1575 would be redesignated paragraphs (a)(2)(i), (ii), and (iii), respectively.

Following the first two sentences of paragraph (a) of § 404.1575, we propose to add a new paragraph (a)(1), *How we evaluate the work you do after you have become entitled to disability benefits.* In proposed § 404.1575(a)(1), we explain which rules we will use to evaluate your work activity if you are self-employed and you perform the work activity while you are entitled to Social Security disability benefits. (We explain that Social Security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability.) We explain that the way we will evaluate your work activity will depend on whether the work occurs before or after you have received Social Security disability benefits for at least 24 months and on the purpose of the evaluation. We explain in § 404.1575(a)(1) that we will use the guides in proposed paragraph (e), which provide for the use of the countable income test, to evaluate the work activity you do after you have received such benefits for at least 24 months to determine whether you have engaged in substantial gainful activity for the purpose of determining whether your disability has ceased. In all other cases in which we evaluate your work activity as a self-employed person to make a substantial gainful activity determination, we will apply the guides in proposed § 404.1575(a)(2). Proposed § 404.1575(a)(2) sets out the three tests we currently use to evaluate the work of a self-employed person.

We explain in proposed § 404.1575(a)(1) that we will use the three tests described in proposed § 404.1575(a)(2) to evaluate the work activity you do before you have received Social Security disability benefits for 24 months to determine if you have engaged in substantial gainful activity, regardless of the purpose of the evaluation. We also explain that, after we have determined that your disability has ceased during the reentitlement period because you performed substantial gainful activity, we will use the three tests to determine whether you are doing substantial gainful activity in subsequent months in or after your reentitlement period, whether your work activity occurs before or after you have received Social Security disability benefits for at least 24 months. After we have determined that your disability has ceased due to the performance of substantial gainful activity during the reentitlement period, we make substantial gainful activity determinations to decide whether benefits should be started or stopped for a subsequent month(s) during the reentitlement period and to decide when your entitlement to benefits terminates (see § 404.1592a(a)(2) and (3)). We may use the three tests that involve looking at work activity in making these substantial gainful activity determinations because these determinations do not involve deciding that you are no longer disabled.

We propose to revise § 404.1575(c). In proposed 404.1575(c)(1), *Determining countable income,* we explain what deductions are applied to your net income to decide the amount of your income we use to determine if you have done substantial gainful activity. We explain that we refer to this amount as your countable income. In proposed § 404.1575(c)(2), we explain when we consider your countable income to be substantial.

In proposed § 404.1575(e), *Special rules for evaluating the work you do*

after you have received social security disability benefits for at least 24 months, we explain the countable income test and when it applies. We explain that we will apply this test to evaluate the work you are doing or have done if, at the time you perform the work, you are entitled to Social Security disability benefits and you have received such benefits for at least 24 months. We explain that we will apply the test only when we are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity. We explain that, under the countable income test, we will not consider the services you perform in that work to determine that the work you are doing shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled. However, we may consider the services you perform to determine that you are not doing substantial gainful activity.

In proposed paragraph (e)(2), *The 24-month requirement,* we explain that we consider you to have received Social Security disability benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you received Social Security disability benefits that you were due. We provide examples of months that do not count toward the 24-month requirement.

We explain the new evaluation test in proposed (e)(3), *The countable income test.* Under the countable income test, we will compare your countable income to the substantial gainful activity earnings guidelines in § 404.1574(b)(2) to determine if you have engaged in substantial gainful activity. We will consider that you have engaged in substantial gainful activity if your monthly countable income averages more than the amounts in § 404.1574(b)(2) unless the evidence shows that you did not render significant services in the month(s). If your average monthly countable income is equal to or less than the amounts in § 404.1574(b)(2), or if the evidence shows that you did not render significant services, we will consider that your work as a self-employed person shows that you have not engaged in substantial gainful activity.

Sections 404.1590 and 416.990 When and how often we will conduct a continuing disability review. We propose to add two new paragraphs to these sections to explain when we will and will not start continuing disability reviews if you are in the Ticket to Work program and your ticket is in use (proposed paragraph (h)), and if you are covered by the provisions of section 221(m) of the Act (proposed paragraph (i)).

In proposed §§ 404.1590(h) and 416.990(h), *If you are participating in the Ticket to Work program,* we restate our rules already set out in §§ 411.160 and 411.165 that we will not start a continuing disability review for you during the period in which you are using a ticket under the Ticket to Work program. This proposed amendment to §§ 404.1590 and 416.990 is not a change in policy, but incorporates rules already set out in §§ 411.160 and 411.165. In addition, we provide in proposed § 404.1590(h) that this provision does not apply to the reviews we do under title II using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity (see § 411.160(b)). (As we have already noted, your performance of substantial gainful activity does not affect your SSI eligibility because of the work incentive provisions of section 1619 of the Act.)

In proposed §§ 404.1590(i) and 416.990(i), *If you are working and have received social security disability benefits for at least 24 months,* we provide rules for you if you are covered by section 221(m) of the Act. In proposed paragraph (i)(1), *General,* we explain that we will not start a continuing disability review based solely on your work activity if you are currently entitled to benefits based on disability under title II of the Act and you have received such benefits for at least 24 months. We also list the types of title II disability benefits that qualify.

Although section 221(m)(1)(A) says that a continuing disability review may not be "scheduled" based solely on your work activity, we propose to use the word "start" in this provision and the remainder of proposed paragraph (i) of §§ 404.1590 and 416.990 to avoid any confusion about what we will do, and to use consistent language throughout these sections of our rules. Existing provisions in §§ 404.1590 and 416.990 use both words. We use the word "start" in the opening sentence of current §§ 404.1590(b) and 416.990(b) to explain when we will do a continuing disability review. We then use the word "scheduled" in current paragraphs (b)(1), (b)(2) and (b)(10) to explain when we will start a continuing disability review that we have scheduled in advance; that is, based on a diary for "medical improvement expected," "medical improvement possible," or "medical improvement not expected," or on a "vocational reexamination diary." In current paragraph (b)(11) of § 416.990, we specify a timeframe within which we must review the cases of certain children (*i.e.*, by the first birthday of the child) unless certain conditions are met. In current paragraph (b)(11)(ii) of § 416.990, which discusses one of the conditions, we use the word "schedule" to describe a situation in which we set a time in advance for conducting a continuing disability review. The remaining provisions in current paragraphs (b)(3)–(b)(9) of §§ 404.1590 and 416.990 describe situations in which we do not schedule continuing disability reviews in advance but may start them sooner than the regularly scheduled reviews.

In proposed §§ 404.1590(i)(2) and 416.990(i)(2), *The 24-month requirement,* we provide rules for determining whether the 24-month requirement in proposed §§ 404.1590(i)(1) and 416.990(i)(1) is met. In proposed paragraph (i)(2)(i), we explain that months for which you have actually received Social Security disability benefit payments under title II that you were due will be counted for the 24-month requirement. The 24 months do not have to be consecutive. We also explain that we do not include months for which you were technically "entitled" but did not receive benefit payments, and provide two examples. In addition, we clarify that months for which you received only SSI payments and months for which you received continued benefits pending the appeal of a medical cessation determination, do not count toward the 24-month requirement.

In proposed §§ 404.1590(i)(2)(ii) and 416.990(i)(2)(ii), we explain that you will not meet the 24-month requirement for purposes of proposed § 404.1590(i)(1) or § 416.990(i)(1) if you have not received Social Security disability benefits for at least 24 months as of the date on which we start a continuing disability review. We explain that the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning the review.

In proposed §§ 404.1590(i)(3) and 416.990(i)(3), *When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months,* we include a reminder that, even if you meet the requirements of proposed paragraph (i)(1) of § 404.1590 or § 416.990, we may still start a continuing disability review if we have another reason to do so; that is, when the fact that you are working is not the sole reason for the continuing disability review. We include two examples,

including a reminder that we must still schedule you for regularly scheduled continuing disability reviews, as provided under section 221(m)(2)(A) of the Act.

In § 404.1590, we propose to include a paragraph (i)(4), *Reviews to determine whether the work you have done shows that you are able to do substantial gainful activity*, to clarify that the exemption from continuing disability reviews in proposed paragraph (i)(1) of that section does not apply to certain reviews we conduct under title II of the Act. We explain that proposed paragraph (i)(1) does not apply to the reviews we conduct using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled. We do not conduct similar reviews under title XVI because of the work incentive provisions in section 1619 of the Act. Therefore, we do not include a similar provision in the proposed amendments to § 416.990.

As we explain earlier in this preamble, if we start a continuing disability review based on your work activity, we will provide an opportunity for you to request that we review that action if you believe that you are protected by section 221(m)(1)(A) of the Act and that the action of starting the continuing disability review was in error. If we review the action and conclude that the initiation of the medical continuing disability review was in error, we will discontinue the processing of the continuing disability review. If the continuing disability review proceeds to completion and we make a medical cessation determination, we are proposing rules in §§ 404.1590(i)(5) and 416.990(i)(4) to provide a procedure under which we will vacate the medical cessation determination if the action of starting the continuing disability review is shown to have been in error because you were protected by section 221(m)(1)(A). You must provide evidence to us that establishes that you met the requirements of proposed § 404.1590(i)(1) or § 416.990(i)(1) as of the date of the start of your continuing disability review and that the start of the review was erroneous. In addition, we must receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.

We also propose to amend paragraph (a) of §§ 404.1590 and 416.990 to include references to proposed new paragraphs (h) and (i) of these sections.

Section 404.1592a The reentitlement period. We propose to amend paragraph (a) of § 404.1592a to explain when the special rules in proposed §§ 404.1574(b)(3)(iii) and 404.1575(e) may apply, and when they will not apply, in making substantial gainful activity determinations. We also propose to revise paragraph (a)(3) of § 404.1592a to separate the provisions into two lower level paragraphs. We propose to designate the second, third, and fourth sentences of paragraph (a)(3) as paragraph (a)(3)(i). We propose to designate the fifth, sixth, and seventh sentences of paragraph (a)(3) as paragraph (a)(3)(ii).

We propose to amend paragraph (a)(1) of § 404.1592a to include a reference to the special rules for evaluating the work you do after you have received Social Security disability benefits for at least 24 months. We are including this reference in the list of examples of the relevant rules we will apply when deciding whether the work you do following completion of a trial work period is substantial gainful activity for purposes of determining whether your disability has ceased. We are proposing to make a similar change in newly designated paragraph (a)(3)(ii).

We propose to revise the last sentence of paragraph (a)(2)(i) of this section to clarify that, if we have decided that your disability ceased during the reentitlement period because you performed substantial gainful activity, we will not apply the special rules in proposed §§ 404.1574(b)(3)(iii) and 404.1575(e) in making substantial gainful activity determinations for purposes of determining whether benefits should be paid for any particular months in the reentitlement period. We propose to make a similar change in newly designated paragraph (a)(3)(i) to indicate that, if we have decided that your disability ceased during the reentitlement period based on your work activity, we will not apply the special rules in proposed §§ 404.1574(b)(3)(iii) and 404.1575(e) when deciding whether you engaged in substantial gainful activity following the reentitlement period for purposes of determining whether your entitlement to benefits has terminated. The special rules in proposed §§ 404.1574(b)(3)(iii) and 404.1575(e) do not apply in making these substantial gainful activity determinations because these determinations do not involve deciding whether your disability has ceased.

Section 404.1594 How we will determine whether your disability continues or ends.

Section 416.994 How we will determine whether your disability continues or ends, disabled adults. We propose to add new § 404.1594(i), *If you work during your current period of entitlement based on disability or during certain other periods*, and new § 416.994(b)(8), *If you work during your current period of eligibility based on disability or during certain other periods*, to:

- Incorporate a longstanding instruction we have that interprets our regulations on the medical improvement review standard;
- Explain how we will consider the activities you do in your work if you are covered by section 221(m) of the Act;
- Explain how we will consider the activities you do in your work if you are not covered by section 221(m) of the Act; and
- Explain how we will consider the activities you perform in work when determining whether you are entitled to expedited reinstatement of benefits under sections 221(i) or eligible for expedited reinstatement of benefits under 1631(p) of the Act.

In proposed §§ 404.1594(i)(1) and 416.994(b)(8)(i), we propose to clarify our rules about the last two steps of the medical improvement review standard sequential evaluation process for determining whether disability continues or ends to reflect an interpretation contained in an operating instruction we have been using for a number of years. The proposed provisions clarify that we will not consider work you are doing now, or work that you did, during your current period of entitlement based on disability under title II (proposed § 404.1594(i)(1)), or during your current period of eligibility based on disability under title XVI (proposed § 416.994(b)(8)(i)), to be past relevant work for purposes of the second to last step of the sequential evaluation processes described in §§ 404.1594(f) and 416.994(b)(5). The proposed provisions also explain that we will not consider such work to be "past work experience" when we decide whether you can do other work at the last step of those processes. In these provisions of the proposed rules, we also propose to provide that we will not consider certain work to be past relevant work or past work experience for purposes of the last two steps of the medical improvement review standard sequential evaluation process when we decide whether you qualify for expedited reinstatement of benefits under section 223(i) or 1631(p) of the Act. For purposes of deciding whether you qualify for expedited reinstatement of benefits, the proposed rules would apply to work you are doing or have done during or after your previous period of entitlement or eligibility which terminated and which is the basis

for your request for expedited reinstatement. We published final rules regarding the expedited reinstatement provisions in the **Federal Register** on September 30, 2005 (70 FR 57132). Those rules do not discuss the specific issue we are addressing here.

In proposed §§ 404.1594(i)(2) and 416.994(b)(8)(ii), we provide rules for you if you are covered by section 221(m) of the Act. Section 221(m)(1)(B) of the Act explains that if you are covered by this section, "no work activity engaged in by the individual may be used as evidence that the individual is no longer disabled." Based on this statutory language, we provide in the proposed rules that we will not consider the activities you do in your work if they support a finding that you are no longer disabled. We may still find that you are no longer disabled, but only if that finding is based on other evidence.

We also provide that we may consider the activities you do in your work if they provide evidence that you are still disabled or if they do not conflict with a finding that you are still disabled. Your functioning on the job may help us to establish that you are still disabled. We concluded that we are required to include this provision because the language of section 221(m)(1)(B) speaks only about the use of work activity as evidence that an individual is "no longer disabled."

We also propose to include in §§ 404.1594(i)(2) and 416.994(b)(8)(ii) a statement that we will not presume that you are still disabled if you stop working. This would incorporate the statutory requirement of section 221(m)(1)(C) into our regulations.

In proposed §§ 404.1594(i)(3) and 416.994(b)(8)(iii), we explain how we consider activities from work in all other continuing disability reviews; that is, if you receive disability benefits under title II but are not covered by section 221(m) or if you are eligible only for SSI benefits. The proposed rules would only incorporate into our regulations an interpretation we already use. Even though we may not consider the work that you do during your current period of entitlement or eligibility based on disability to be past relevant work or past work experience, we do consider the physical and mental activities you do in your work when we need to assess your functioning (for example, when we assess your residual functional capacity) in deciding whether your disability continues or ends. We consider the activities regardless of whether they support a finding that your disability continues or support a finding that your disability has ended. (It is only when you are covered by section 221(m) that we would not consider the activities if they support a finding that your disability has ended, as explained in proposed §§ 404.1594(i)(2) and 416.994(b)(8)(ii), discussed above.) In proposed §§ 404.1594(i)(3) and 416.994(b)(8)(iii), therefore, we are only proposing to codify in our regulations our current practice when you are not covered by section 221(m).

We concluded that we are required to do this in these cases, because of the general requirements of the Act and our regulations that we consider all of the relevant evidence in your case record whenever we make a determination about your disability. Section 221(m) provides an explicit exception to this rule, but only for people who are covered by that section.

We are aware that the proposed provisions in §§ 404.1594(i)(2) and 416.994(b)(8)(ii) may create a more complex process because we may, in some cases, be required to disregard information about your work that would otherwise be evidence about your physical and mental abilities. We may also be required to undertake additional development to obtain alternative evidence about your abilities, or to clarify evidence (such as medical opinion evidence) that may have been based on information about your activities at work. We are also aware that these proposed provisions may be too complex for you to understand. However, we concluded that there is no other permissible interpretation of the language of section 221(m)(1)(B).

We are also adding cross-references in several places in §§ 404.1594 and 416.994 as a reminder to consider the provisions in proposed §§ 404.1594(i) and 416.994(b)(8) whenever appropriate.

Other changes. We propose to make a few minor editorial corrections and revisions to existing provisions. These changes are not substantive and we do not intend to change the meaning of existing rules in any way by them. For example, we propose to provide paragraph designations for some of the clauses within §§ 404.1590(b) and 416.990(b) to make them easier to refer to. We are also deleting the reference to completion of a trial work period from § 416.990(b)(4). There are no trial work periods under title XVI because of other work incentive provisions in the Act. When we last revised our regulations to remove references to the trial work period from the SSI regulations, we inadvertently overlooked this provision. *See* 65 FR 42772, 42775 (July 11, 2000). In addition, we are replacing the word "decide" with the word "determine" in the heading of § 416.994 to conform to the language used in the headings of §§ 404.1594 and 416.994a.

Clarity of These Proposed Rules. Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed 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 proposed regulations would 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

These proposed regulations impose no reporting or recordkeeping requirements that require OMB clearance.

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

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability

Insurance, Reporting and recordkeeping requirements, Social Security, Vocational rehabilitation.

20 CFR Part 416

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

Dated: October 3, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts J and P of part 404 and subparts I and N of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

1. The authority citation for subpart J continues to read as follows:

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

2. Section 404.903 is amended by removing the word "and" at the end of paragraph (v), replacing the period at the end of paragraph (w) with "; and", and adding a new paragraph (x) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(x) Starting or discontinuing a continuing disability review.

Subpart P—Determining Disability and Blindness

3. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a), (i), and (m), 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), (i), and (m), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

4. Section 404.1574 is amended by revising paragraph (b) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b)(2) and (3) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (*see* paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (*see* § 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2) and (3) of this section. See § 404.1574a for our rules on averaging earnings.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001,* and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* (i) *General.* If your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We will generally not consider other information in addition to your earnings except in the circumstances described in paragraph (b)(3)(ii) of this section.

(ii) *When we will consider other information in addition to your earnings.* We will generally consider other information in addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to defer or suppress your earnings. (See paragraph (b)(3)(iii) of this section for when we do not apply this rule.) Examples of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

(iii) *Special rule for considering earnings alone when evaluating the work you do after you have received social security disability benefits for at least 24 months.* Notwithstanding paragraph (b)(3)(ii) of this section, we will not consider other information in addition to your earnings to evaluate the work you are doing or have done if—

(A) At the time you do the work, you are entitled to social security disability benefits and you have received such benefits for at least 24 months (see paragraph (b)(3)(iv) of this section); and

(B) We are evaluating that work to consider whether you have engaged in substantial gainful activity or

demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity (see §§ 404.1592a(a)(1) and (3)(ii) and 404.1594(d)(5) and (f)(1)).

(iv) *When we consider you to have received social security disability benefits for at least 24 months.* For purposes of paragraph (b)(3)(iii) of this section, social security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability. We consider you to have received such benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you received social security disability benefits that you were due. The 24 months do not have to be consecutive. Any months for which you were entitled to benefits but for which you did not receive a benefit payment will not be counted for the 24-month requirement; for example, a month for which you did not receive a benefit payment because of worker's compensation offset or because you repaid an overpayment to us. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

* * * * *

5. Section 404.1575 is amended by revising paragraphs (a) and (c) and adding new paragraph (e) to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (e) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both.

(1) *How we evaluate the work you do after you have become entitled to disability benefits.* If you are entitled to social security disability benefits and you work as a self-employed person, the way we will evaluate your work activity will depend on whether the work activity occurs before or after you have received such benefits for at least 24 months and on the purpose of the evaluation. For purposes of paragraphs (a) and (e) of this section, social security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability. We will use the rules in paragraph (e)(2) of this section to determine if you have received such benefits for at least 24 months.

(i) We will use the guides in paragraph (a)(2) of this section to evaluate any work activity you do before you have received social security disability benefits for at least 24 months to determine whether you have engaged in substantial gainful activity, regardless of the purpose of the evaluation.

(ii) We will use the guides in paragraph (e) of this section to evaluate any work activity you do after you have received social security disability benefits for at least 24 months to determine whether you have engaged in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity.

(iii) If we have determined under § 404.1592a(a)(1) that your disability ceased in a month during the reentitlement period because you performed substantial gainful activity, and we need to decide under § 404.1592a(a)(2)(i) or (a)(3)(i) whether you are doing substantial gainful activity in a subsequent month in or after your reentitlement period, we will use the guides in paragraph (a)(2) of this section (subject to the limitations described in § 404.1592a(a)(2)(i) and (a)(3)(i)) to determine whether your work activity in that month is substantial gainful activity. We will use the guides in paragraph (a)(2) of this section for these purposes, regardless of whether your work activity in that month occurs before or after you have received social security disability benefits for at least 24 months.

(2) *General rules for evaluating your work activity if you are self-employed.* We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(i) *Test one:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(ii) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(iii) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

* * * * *

(c) *What we mean by substantial income.* (1) *Determining countable income.* We deduct your normal business expenses from your gross income to determine net income. Once we determine your net income, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, *e.g.*, rent, utilities, or purchases and repair of equipment, or provides you

with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. For purposes of this section, we refer to this amount as your countable income. We will generally average your countable income for comparison with the earnings guidelines in § 404.1574(b)(2). See § 404.1574a for our rules on averaging of earnings.

(2) *When countable income is considered substantial.* We will consider your countable income to be substantial if—

(i) It averages more than the amounts described in § 404.1574(b)(2); or

(ii) It averages less than the amounts described in § 404.1574(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

* * * * *

(e) *Special rules for evaluating the work you do after you have received social security disability benefits for at least 24 months.* (1) *General.* We will apply the provisions of this paragraph to evaluate the work you are doing or have done if, at the time you do the work, you are entitled to social security disability benefits and you have received such benefits for at least 24 months. We will apply the provisions of this paragraph only when we are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity (see §§ 404.1592a(a)(1) and (3)(ii) and 404.1594(d)(5) and (f)(1)). We will use the countable income test described in paragraph (e)(3) of this section to determine whether the work you do after you have received such benefits for at least 24 months is substantial gainful activity or demonstrates the ability to do substantial gainful activity. We will not consider the services you perform in that work to determine that the work you are doing shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled. However, we may consider the services you perform to determine that you are not doing substantial gainful activity. We will generally consider work that you were forced to stop or reduce below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section.

(2) *The 24-month requirement.* For purposes of paragraphs (a)(1) and (e) of this section, we consider you to have received social security disability benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you received social security disability benefits that you were due. The 24 months do not have to be consecutive. Any months for which you were entitled to benefits but for which you did not receive a benefit payment will not be counted for the 24-month requirement; for example, a month for which you did not receive a benefit payment because of worker's compensation offset or because you repaid an overpayment to us. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

(3) *Countable income test.* We will compare your countable income to the earnings guidelines in § 404.1574(b)(2) to determine if you have engaged in substantial gainful activity. See paragraph (c)(1) of this section for an explanation of countable income. We will consider that you have engaged in substantial gainful activity if your monthly countable income averages more than the amounts described in § 404.1574(b)(2) for the month(s) in which you work, unless the evidence shows that you did not render significant services in the month(s). See paragraph (b) of this section for what we mean by significant services. If your average monthly countable income is equal to or less than the amounts in § 404.1574(b)(2) for the month(s) in which you work, or if the evidence shows that you did not render significant services in the month(s), we will consider that you work as a self-employed person shows that you have not engaged in substantial gainful activity.

6. Section 404.1590 is amended by adding three new sentences to the end of paragraph (a), revising paragraph (b) introductory text and paragraphs (b)(6), (b)(7)(i), and (b)(8), and adding new paragraphs (h) and (i) to read as follows:

§ 404.1590 When and how often we will conduct a continuing disability review.

(a) *General.* * * * In paragraphs (b) through (g) of this section, we explain when and how often we conduct continuing disability reviews for most individuals. In paragraph (h) of this section, we explain special rules for some individuals who are participating in the Ticket to Work program. In paragraph (i) of this section, we explain special rules for some individuals who work.

(b) *When we will conduct a continuing disability review.* Except as provided in paragraphs (h) and (i) of this section, we will start a continuing disability review if—

* * * * *

(6) You tell us that—

(i) You have recovered from your disability; or

(ii) You have returned to work;

(7) Your State Vocational Rehabilitation Agency tells us that—

(i) The services have been completed; or

* * * * *

(8) Someone in a position to know of your physical or mental condition tells us any of the following, and it appears that the report could be substantially correct:

(i) You are not disabled; or

(ii) You are not following prescribed treatment; or

(iii) You have returned to work; or

(iv) You are failing to follow the provisions of the Social Security Act or these regulations;

* * * * *

(h) *If you are participating in the Ticket to Work program.* If you are participating in the Ticket to Work program, we will not start a continuing disability review during the period in which you are using a ticket. However, this provision does not apply to reviews we conduct using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled. See subpart C of part 411 of this chapter.

(i) *If you are working and have received social security disability benefits for at least 24 months.*

(1) *General.* Notwithstanding the provisions in paragraphs (b)(4), (b)(5), (b)(6)(ii), (b)(7)(ii), and (b)(8)(iii) of this section, we will not start a continuing disability review based solely on your work activity if—

(i) You are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's

or widower's insurance benefits based on disability; and

(ii) You have received such benefits for at least 24 months (see paragraph (i)(2) of this section).

(2) *The 24-month requirement.*

(i) The months for which you have actually received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due will count for the 24-month requirement under paragraph (i)(1)(ii) of this section, regardless of whether the months were consecutive. Any month for which you were entitled to benefits but for which you did not receive a benefit payment will not be counted for the 24-month requirement; for example, a month for which you did not receive a benefit payment because of worker's compensation offset or because you repaid an overpayment to us. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement. Benefits that are continued pending reconsideration and/or a hearing before an administrative law judge based on medical cessation determination (see *§§ 404.1597a*) will not be counted for the 24-month requirement.

(ii) In determining whether paragraph (i)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability for at least 24 months as of the date on which we start a continuing disability review. For purposes of this provision, the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

(3) *When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months.* Even if you meet the requirements of paragraph (i)(1) of this section, we may still start a continuing disability review for a reason(s) other than your work activity. We may start a continuing disability review if we have scheduled you for a periodic review of your continuing disability, we need a current medical or other report to see if your disability continues, we receive evidence which raises a question as to whether your disability continues, or you fail to follow the provisions of the Social Security Act or these regulations. For example, we will start a continuing disability review when you have been scheduled for a medical improvement expected diary review, and we may start a continuing disability review if you failed to report your work to us.

(4) *Reviews to determine whether the work you have done shows that you are able to do substantial gainful activity.* Paragraph (i)(1) of this section does not apply to reviews we conduct using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled.

(5) *Erroneous start of the continuing disability review.* If we start a continuing disability review based solely on your work activity that results in a medical cessation determination, we will vacate the medical cessation determination if—

(i) You provide us evidence that establishes that you met the requirements of paragraph (i)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and

(ii) We receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.

7. Section 404.1592a is amended by revising the second sentence of paragraph (a)(1), the sixth sentence of paragraph (a)(2)(i), and paragraph (a)(3) to read as follows:

§ 404.1592a The reentitlement period.

(a) * * *

(1) * * * When we decide whether this work is substantial gainful activity, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, as well as the special rules for evaluating the work you do after you have received disability benefits for at least 24 months. * * *

(2)(i) * * * Once we have determined that your disability has ceased during the reentitlement period because of the performance of substantial gainful activity as explained in paragraph (a)(1) of this section, we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, the provisions of § 404.1574a regarding averaging of earnings, or the special rules in §§ 404.1574(b)(3)(iii) and 404.1575(e) for evaluating the work you do after you have received disability benefits for at least 24 months, to determine whether benefits should be paid for any particular month in the reentitlement period that occurs after the month your disability ceased.

(3) The way we will consider your work activity after your reentitlement period ends (see paragraph (b)(2) of this section) will depend on whether you worked during the reentitlement period and if you did substantial gainful activity.

(i) If you worked during the reentitlement period and we decided that your disability ceased during the reentitlement period because of your work under paragraph (a)(1) of this section, we will find that your entitlement to disability benefits terminates in the first month in which you engaged in substantial gainful activity after the end of the reentitlement period (see § 404.325). (See § 404.321 for when entitlement to a period of disability ends.) When we make this determination, we will consider only your work in, or earnings for, that month; we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, the provisions of § 404.1574a regarding averaging of earnings, or the special rules in §§ 404.1574(b)(3)(iii) and 404.1575(e) for evaluating the work you do after you have received disability benefits for at least 24 months.

(ii) If we did not find that your disability ceased because of work activity during the reentitlement period, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, as well as the special rules for evaluating the work you do after you have received disability benefits for at least 24 months, to determine whether your disability ceased because you performed substantial gainful activity after the reentitlement period. If we find that your disability ceased because you performed substantial gainful activity in a month after your reentitlement period ended, you will be paid benefits for the month in which your disability ceased and the two succeeding months. After those three months, your entitlement to a period of disability or to disability benefits terminates (see §§ 404.321 and 404.325).

* * * * *

8. Section 404.1594 is amended by adding a new second sentence to paragraph (b) introductory text, redesignating the second sentence of

paragraph (c) introductory text as the third sentence and adding a new second sentence, revising the third sentence of paragraph (f) introductory text and adding a new fourth sentence, and adding a new paragraph (i) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(b) *Terms and definitions.* * * * In addition, see paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.

* * * * *

(c) *Determining medical improvement and its relationship to your abilities to do work.* * * * (In addition, see paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.) * * *

* * * * *

(f) *Evaluation steps.* * * * The steps are as follows. (See paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.)

* * * * *

(i) *If you work during your current period of entitlement based on disability or during certain other periods.* (1) We will not consider the work you are doing or have done during your current period of entitlement based on disability (or, when determining whether you are entitled to expedited reinstatement of benefits under section 223(i) of the Act, the work you are doing or have done during or after the previously terminated period of entitlement referred to in section 223(i)(1)(B) of the Act) to be past relevant work under paragraph (f)(7) of this section or past work experience under paragraph (f)(8) of this section. In addition, if you are currently entitled to disability benefits under title II of the Social Security Act, we may or may not consider the physical and mental activities that you perform in the work you are doing or have done during your current period of entitlement based on disability, as explained in paragraphs (i)(2) and (3) below.

(2) If you are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act, and at the time we are making a determination on your case you have received such benefits for at least 24 months, we will not consider the activities you perform in the work you are doing or have during your current period of entitlement based on disability if they support a finding that your disability has ended. (We will use the rules in § 404.1590(i)(2) to determine whether the 24-month requirement is met.) However, we will consider the activities you do in that work if they support a finding that your disability continues or they do not conflict with a finding that your disability continues. We will not presume that you are still disabled if you stop working.

(3) If you are not a person described in § 404.1594(i)(2), we will consider the activities you perform in your work at any of the evaluation steps in paragraph (f) of this section at which we need to assess your ability to function.

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

Subpart I—Determining Disability and Blindness

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

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

10. Section 416.974 is amended by revising paragraph (b) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 416.976, and then the guides in paragraphs (b)(2) and (3) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 416.976). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2) and (3) of this section. See § 416.974a for our rules on averaging earnings.

(2) Earnings *that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons) show that you have engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001,* and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that you have not enguged in substantial gainful activity.*

(i) *General.* If your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We will generally not consider other information in addition to your earnings except in the circumstances described in paragraph (b)(3)(ii) of this section.

(ii) *When we will consider other information in addition to your earnings.* We will generally consider other information in addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to control when earnings are

paid to you or the amount of wages paid to you; (for example, if you are working for a small corporation owned by a relative). Examples of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

11. Section 416.990 is amended by adding three new sentences to the end of paragraph (a), revising paragraph (b) introductory text and paragraphs (b)(4), (b)(6), and (b)(8), and adding new paragraphs (h) and (i) to read as follows:

§ 416.990 When and how often we will conduct a continuing disability review.

(a) *General.* * * * In paragraphs (b) through (g) of this section, we explain when and how often we conduct continuing disability reviews for most individuals. In paragraph (h) of this section, we explain special rules for some individuals who are participating in the Ticket to Work program. In paragraph (i) of this section, we explain special rules for some individuals who work and have received social security benefits as well as supplemental security income payments.

(b) *When we will conduct a continuing disability review.* Except as provided in paragraphs (h) and (i) of this section, we will start a continuing disability review if—

* * * * *

(4) You return to work;

* * * * *

(6) You tell us that—

(i) You have recovered from your disability; or

(ii) You have returned to work;

* * * * *

(8) Someone in a position to know of your physical or mental condition tells us any of the following, and it appears that the report could be substantially correct:

(i) You are not disabled or blind; or

(ii) You are not following prescribed treatment; or

(iii) You have returned to work; or

(iv) You are failing to follow the provisions of the Social Security Act or these regulations;

* * * * *

(h) *If you are participating in the Ticket to Work program.* If you are participating in the Ticket to Work program, we will not start a continuing disability review during the period in which you are using a ticket. See subpart C of part 411 of this chapter.

(i) *If you are working and have received social security disability benefits for at least 24 months.*

(1) *General.* Notwithstanding the provisions in paragraphs (b)(4), (b)(5), (b)(6)(ii), (b)(7)(ii), and (b)(8)(iii) of this section, we will not start a continuing disability review based solely on your work activity if—

(i) You are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act (see subpart D of part 404 of this chapter); and

(ii) You have received such benefits for at least 24 months (see paragraph (i)(2) of this section).

(2) *The 24-month requirement.* (i) The months for which you have actually received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due under title II of the Social Security Act will count for the 24-month requirement under paragraph (i)(1)(ii) of this section, regardless of whether the months were consecutive. Any month for which you were entitled to social security disability benefits but for which you did not receive a benefit payment will not be counted for the 24-month requirement; for example, a month for which you did not receive a benefit payment because of worker's compensation offset or because you repaid an overpayment to us. Months for which you received only supplemental security income payments will not be counted for the 24-month requirement. Benefits that are continued pending reconsideration and/or a hearing before an administrative law judge based on medical cessation determination (see § 416.996) will not be counted for the 24-month requirement.

(ii) In determining whether paragraph (i)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act for at least 24 months as of the date on which we start a continuing disability review. For purposes of this provision, the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

(3) *When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months.* Even if you meet the requirements of paragraph (i)(1) of this section, we may still start a continuing disability review for a reason(s) other than your work activity. We may start a continuing disability review if we have scheduled you for a periodic review of your continuing disability, we need a current medical or other report to see if your disability continues, we receive evidence which raises a question as to whether your disability or blindness continues, or you fail to follow the provisions of the Social Security Act or these regulations. For example, we will start a continuing disability review when you have been scheduled for a medical improvement expected diary review, and we may start a continuing disability review if you failed to report your work to us.

(4) *Erroneous start of the continuing disability review.* If we start a continuing disability review based solely on your work activity that results in a medical cessation determination, we will vacate the medical cessation determination if—

(i) You provide us evidence that establishes that you met the requirements of paragraph (i)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and

(ii) We receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.

12. Section 416.994 is amended by revising the section heading, adding a new sentence to the end of paragraph (b)(1) introductory text, redesignating the second sentence of paragraph (b)(2) introductory text as the third sentence and adding a new second sentence, revising the third sentence of paragraph (b)(5) introductory text and adding a new fourth sentence, and adding a new paragraph (b)(8) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) *Disabled persons age 18 or over (adults).* * * *

(1) *Terms and definitions.* * * * In addition, see paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.

* * * * *

(2) Determining medical improvement and its relationship to your abilities to do work.

* * * (In addition, see paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.) * * *

* * * * *

(5) *Evaluation steps.* * * * The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)

* * * * *

(8) *If you work during your current period of eligibility based on disability or during certain other periods.*

(i) We will not consider the work you are doing or have done during your current period of eligibility based on disability (or, when determining whether you are eligible for expedited reinstatement of benefits under section 1631(p) of the Act, the work you are doing or have done during or after the previously terminated period of eligibility referred to in section 1631(p)(1)(B) of the Act) to be past relevant work under paragraph (b)(5)(vi) of this section or past work experience under paragraph (b)(5)(vii) of this section. In addition, if you are currently entitled to disability benefits under title II of the Social Security Act, we may or may not consider the physical and mental activities that you perform in the work you are doing or have done during your current period of entitlement based on disability, as explained in paragraphs (b)(8)(ii) and (iii).

(ii) If you are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act, and at the time we are making a determination on your case you have received such benefits for at least 24 months, we will not consider the activities you perform in the work you are doing or have during your current period of entitlement based on disability if they support a finding that your disability has ended. (We will use the rules in § 416.990(i)(2) to determine whether the 24-month requirement is met.) However, we will consider the activities you do in that work if they support a finding that your disability continues or they do not conflict with a finding that your disability continues. We will not presume that you are still disabled if you stop working.

(iii) If you are not a person described in paragraph (b)(8)(ii) of this section, we will consider the activities you perform in your work at any of the evaluation steps in paragraph (f) of this section at which we need to assess your ability to function.

* * * * *

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

12. The authority citation for subpart N continues to read as follows:

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

13. Section 416.1403 is amended by removing the word "and" at the end of paragraph (a)(20), replacing the period at the end of paragraph (a)(21) with "; and", and adding new paragraph (a)(22) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a)* * *

(22) Starting or discontinuing a continuing disability review.

* * * * *

[FR Doc. 05–20266 Filed 10–7–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

42 CFR Part 1001

RIN 0991–AB39

Medicare and State Health Care Programs: Fraud and Abuse; Safe Harbor for Certain Electronic Prescribing Arrangements Under the Anti-Kickback Statute

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed Rule.

SUMMARY: As required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Public Law 108–173, this proposed rule would establish a new safe harbor under the Federal anti-kickback statute for certain arrangements involving the provision of electronic prescribing technology. Specifically, the safe harbor would protect certain arrangements involving hospitals, group practices, and prescription drug plan (PDP) sponsors and Medicare Advantage (MA) organizations that provide to specified recipients certain nonmonetary remuneration in the form of hardware, software, or information technology and training services necessary and used solely to receive and transmit electronic prescription drug information. In addition, using our separate legal authority under section 1128B(b)(3)(E) of the Social Security Act (the "Act"), we are also proposing separate safe harbor protection for certain electronic health records software and directly related training services. These exceptions are consistent with the President's goal of achieving widespread adoption of interoperable electronic health records for the purpose of improving the quality and efficiency of health care, while maintaining the levels of security and privacy that consumers expect.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on December 12, 2005.

ADDRESSES: You may submit comments by any of the methods set forth below. In all cases, when commenting, please refer to file code OIG–405–P.

- Mail—Office of Inspector General, Department of Health and Human Services, Attention: OIG–405–P, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Please allow sufficient time for us to receive mailed comments by the due date in the event of delivery delays.

- Hand delivery/courier—Office of Inspector General, Department of Health and Human Services, Attention: OIG–405–P, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Because access to the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in OIG's drop box located in the main lobby of the building.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Include agency name and identifier RIN 0991–AB36.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. For information on viewing public comments, see section V of the Supplementary Information section preamble.

FOR FURTHER INFORMATION CONTACT: Catherine Martin, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Anti-Kickback Statute and Safe Harbors

Section 1128B(b) of the Act (42 U.S.C. 1320a–7b(b), the anti-kickback statute) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward the referral of business reimbursable under any of the Federal health care programs, as defined in section 1128B(f) of the Act. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to five years. Violations of the anti-kickback statute may also result in the imposition of civil money penalties (CMPs) under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)), and liability under the False Claims Act, (31 U.S.C. 3729–33).

The types of remuneration covered specifically include, without limitation, kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, in cash or in kind. In addition, prohibited conduct includes not only the payment of remuneration intended to induce or reward referrals of patients, but also the payment of remuneration intended to induce or reward the purchasing, leasing, or ordering of, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item reimbursable by any Federal health care program.

Because of the broad reach of the statute, concern was expressed that some relatively innocuous commercial arrangements were covered by the statute and, therefore, potentially subject to criminal prosecution. In response, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 (section 1128B(b)(3)(E) of the Act), which specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, that would specify various payment and business practices that would not be treated as criminal offenses under the anti-kickback statute, even though they may potentially be capable of inducing referrals of business under the Federal health care programs. Since July 29, 1991, we have published in the **Federal Register** a series of final regulations establishing "safe harbors" in various areas.[1] These OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial or innocuous arrangements." (56 FR 35952, 35958; July 21, 1991).

Health care providers and others may voluntarily seek to comply with safe harbors so that they have the assurance that their business practices will not be subject to any enforcement action under the anti-kickback statute, the CMP provision for anti-kickback violations, or the program exclusion authority related to kickbacks. In giving the Department of Health and Human Services the authority to protect certain arrangements and payment practices under the anti-kickback statute, Congress intended the safe harbor regulations to be evolving rules that would be updated periodically to reflect changing business practices and technologies in the health care industry.

B. Section 101 of MMA

Section 101 of the MMA added a new section 1860D to the Act, establishing a Part D prescription drug benefit in the Medicare program. As part of the new statutory provision, Congress, through section 1860D–4(e) of the Act, directed the Secretary to create standards for electronic prescribing in connection with the new prescription drug benefit, with the objective of improving patient safety, quality of care, and efficiency in the delivery of care.[2] Section 1860D–4(e)(6) of the Act directs the Secretary, in consultation with the Attorney General, to create a safe harbor to the anti-kickback statute that would protect certain arrangements involving the provision of nonmonetary remuneration (consisting of items and services in the form of hardware, software, or information technology or training services) that is necessary and used solely to receive and transmit electronic prescription drug information in accordance with electronic prescribing standards promulgated by the Secretary under section 1860D–4(e)(4) of the Act. Specifically, the safe harbor would set forth conditions under which the provision of such remuneration by hospitals, group practices, and PDP sponsors and MA organizations (collectively, for purposes of this preamble discussion, "Donors") to prescribing health care professionals, pharmacies, and pharmacists (collectively, for purposes of this preamble discussion, "Recipients") would be protected.

The OIG has a longstanding concern about the provision of free or reduced price goods or services to an existing or potential referral source. There is a substantial risk that free or reduced price goods or services may be used as a vehicle to disguise or confer an unlawful payment for referrals of Federal health care program business. Financial incentives offered, paid, solicited, or received in exchange for generating Federal health care business increase the risks of, among other problems: (i) Overutilization of health care items or services; (ii) increased Federal program costs; (iii) corruption of medical decision making; and (iv) unfair competition. Consistent with the structure and purpose of the anti-kickback statute and the regulatory authority at section 1128B(b)(3)(E) of the Act, we believe any safe harbor for electronic prescribing arrangements should protect innocuous or beneficial arrangements that would eliminate perceived barriers to the adoption of electronic prescribing without creating undue risk that the arrangement might be used to induce or reward the generation of Federal health care program business.

We do not believe Congress, in enacting section 1860D–4(e)(6) of the Act, intended to suggest that a new safe harbor is needed for all or even most arrangements involving the provision of electronic prescribing items and services. In general, fair market value arrangements that are arm's-length and do not take into account the volume or value of Federal health care program referrals, or arrangements that do not have as one purpose the generation of business payable by a Federal health care program, should not raise concerns under the anti-kickback statute. Simply put, absent the requisite intent, the anti-kickback statute is not violated. In addition, many arrangements can be structured to fit in existing safe harbors, including the safe harbors for discounts (42 CFR 1001.952(h)) and for remuneration offered to employees (42 CFR 1001.952(i)). Finally, parties may use the OIG advisory opinion process (42 CFR part 1008; *http://oig.hhs.gov/fraud/advisoryopinions.html*) to determine whether their particular arrangements would be subject to OIG sanctions.

In addition to the new safe harbor under the anti-kickback statute, section 1860D–4(e)(6) of the Act directs the Secretary to create a corresponding exception to section 1877 of the Act, commonly known as the physician self-referral law. That exception is being

[1] 56 FR 35952 (July 29, 1991); 61 FR 2122 (January 25, 1996); 64 FR 63518 (November 19, 1999); 64 FR 63504 (November 19, 1999); and 66 FR 62979 (December 4, 2001).

[2] *See* H.R. Conf. Rep. No. 108–391, 495 (2003).

promulgated through a separate rulemaking by the Centers for Medicare & Medicaid Services (CMS), the agency that administers the physician self-referral law. We have endeavored to ensure as much consistency as possible between our proposed safe harbor and the corresponding exception proposed by CMS, given the differences in the respective underlying statutes. We intend the final rules to be similarly consistent. One significant difference in the statutory schemes is that fitting in an exception under section 1877 is mandatory, whereas complying with a safe harbor under the anti-kickback statute is voluntary. In other words, arrangements that do not comply with the electronic prescribing safe harbor will not necessarily be illegal under the anti-kickback statute. Rather, they will be subject to the customary case-by-case review under the statute. Another difference is that section 1877 applies only to referrals from physicians, while the anti-kickback statute applies more broadly.

In certain respects, we are considering safe harbor standards that might impose stricter conditions than the corresponding exception to section 1877. In part, this reflects the separate purposes of the anti-kickback statute and section 1877, as well as the serious nature of the felony violation described by the anti-kickback statute. In essence, section 1877 of the Act sets a minimum standard for acceptable financial arrangements; the anti-kickback statute addresses residual risk that may be posed by arrangements that otherwise comply with a physician self-referral exception. As explained in the Phase I final physician self-referral rule promulgated by CMS, "many relationships that may not merit blanket prohibition under section 1877 of the Act can, in some circumstances and given necessary intent, violate the anti-kickback statute." (66 FR 856, 863; January 4, 2001).

II. Provisions of the Proposed Rule

This proposed rule would add a new paragraph (x) to the existing safe harbor regulations at 42 CFR 1001.952. This new paragraph (x) would describe more specifically the items and services protected by the new safe harbor for prescribing drugs electronically; the individuals and entities that may provide the protected items and services; and the conditions under which providing the items and services to prescribing health care professionals, pharmacies, and pharmacists would be protected. In addition, using our separate legal authority at § 1128B(b)(3)(E) of the Act, as discussed below, we are proposing separate safe harbor protection for certain electronic health records software not covered by the MMA mandated safe harbor for electronic prescribing. These proposed safe harbors would, if promulgated, create separate and independent grounds for protection under the anti-kickback statute. For the convenience of the public, we are providing the following chart that lays out schematically the overall structure and approach of these proposals, details of which are provided below in Sections II. A and B. Readers are cautioned that the proposals contain additional conditions and information not summarized here.

	MMA-mandated electronic prescribing safe harbor	Pre-interoperability electronic health records safe harbor	Post-interoperability electronic health records safe harbor
Authority for Proposed Exception ..	Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.	Section 1128B(b)(3)(E) of the Social Security Act.	Section 1128B(b)(3)(E) of Social Security Act.
Covered Technology	*Proposed:* • Items and services that are necessary and used solely to transmit and receive electronic prescription drug information. • Includes hardware, software, internet connectivity, and training and support services.	*Proposed:* • Software used solely for the transmission, receipt or maintenance of electronic health records. • Directly-related training services. • Software *must* include an electronic prescribing component.	*Proposed:* • *Certified* health records software. • Directly-related training services. • Software *must* include an electronic prescribing component. • Could include billing and scheduling software, provided that the core function of the software is electronic health records.
Standards with Which Donated Technology Must Comply.	*Proposed:* • Foundation standards for electronic prescribing as adopted by the Secretary.	*Proposed:* • Electronic prescribing component must comply with foundation standards for electronic prescribing as adopted by the Secretary.	*Proposed:* • Product certification criteria adopted by the Secretary Electronic prescribing component must comply with foundation standards for electronic prescribing as adopted by the Secretary, to the extent these standards are not fully incorporated into the product certification criteria.
Permissible Donors	*Proposed:* • As required by statute, permissible donors are hospitals (to members of their medical staffs), group practices (to physician members), PDP sponsors and MA organizations (to network pharmacists and pharmacies, and to prescribing health care professionals).	*Proposed:* • Hospitals to members of their medical staffs. • Group practices to physician members. • PDP sponsors. • MA organization.	*Proposed:* • Hospitals to members of their medical staffs. • Group practices to physician members. • PDP sponsors. • MA organization.

	MMA-mandated electronic prescribing safe harbor	Pre-interoperability electronic health records safe harbor	Post-interoperability electronic health records safe harbor
Selection of Recipients	*Proposed:* • Donors may not take into account the volume or value of referrals from the recipient or other business between the parties.	*Proposed:* • Donors may not take into account the volume or value of referrals from the recipient or other business between the parties.	*Proposed:* • Donors may use criteria to select recipients that are not directly related to the volume or value of referrals or other business generated between the parties.
Value of Protected Technology	*Proposed:* • No specific dollar amount proposed for a cap on the value of protected technology.	*Proposed:* • No specific dollar amount proposed for a cap on the value of protected items and services.	*Proposed:* • No specific dollar amount proposed for a cap on the value of protected items and services. • May be greater than the cap on pre-interoperability donations.

A. Electronic Prescribing Safe Harbor Required Under Section 101 of the MMA: Paragraph (x)

1. Protected Nonmonetary Remuneration

Section 1860D–4(e)(6) of the Act authorizes the creation of a safe harbor for the provision of items and services that are "necessary and used solely" to receive and transmit electronic prescription drug information. This proposed rule would clarify the items and services that would qualify for the new safe harbor (for purposes of this preamble discussion, "qualifying electronic prescribing technology").

"Necessary" nonmonetary remuneration.—First, consistent with the MMA mandate, the proposed safe harbor would protect items or services that are "necessary" to conduct electronic prescription drug transactions. This might include, for example, hardware, software, broadband or wireless Internet connectivity, training, information technology support services, and other items and services used in connection with the transmission or receipt of electronic prescribing information. However, the safe harbor would not protect arrangements in which a Donor provides items or services that are technically or functionally equivalent to items and services the Recipient currently possesses or has obtained. Thus, for example, under the proposed regulations, a Donor can provide a hand-held device capable of transmitting electronic prescribing information to the Recipient, even if the Recipient already has a desktop computer that could be used to transmit or receive the same information, because the mobility allowed by the hand-held device offers a material advantage over the desktop computer for Recipients who would use the device portably. By contrast, the provision of a second hand-held device would not qualify for safe harbor protection if the Recipient already has a hand-held device sufficient to run the requisite electronic prescribing software. We do not interpret the term "necessary" to preclude upgrades of equipment or software that significantly enhance the functionality of the item or service.

We believe restricting the exception to "necessary" items and services is important to minimize the potential for abuse. However, we recognize that Donors will not necessarily know which items and services the Recipient already possesses or has obtained. Accordingly, proposed § 1001.952(x)(7)(iv) would require the Recipient to certify that the items and services to be provided are not technically or functionally equivalent to items or services the Recipient already possesses or has obtained. The certification would need to be updated prior to the provision of any necessary upgrades or items and services not reflected in the original certifications. We are concerned that the certification process would be ineffective as a safeguard against fraud and abuse if it is a mere formality or if Recipients simply execute a form certification provided by a Donor. Therefore, we are proposing at § 1001.952(x)(8) that the Donor must not have actual knowledge of, and not act in reckless disregard or deliberate ignorance of, the fact that the Recipient possesses or has obtained items and services that are technically or functionally equivalent to those donated by the Donor. The Recipient would be protected only if the certification is truthful. We are soliciting comments about other ways to address this concern.

We are also concerned that there may be a risk that Recipients would intentionally divest themselves of functionally or technically equivalent technology that they already possess to shift costs to Donors. We are soliciting public comments on how best to address this issue.

"Used solely".—In addition to the "necessary" standard, section 1860D–4(e)(6) of the Act provides that the items and services must be "used solely" for the transmission or receipt of electronic prescribing information. We believe Congress included this requirement to safeguard against abusive arrangements in which the remunerative technology might constitute a payment for referrals because it might have additional value attributable to uses other than electronic prescribing. For example, a computer that a physician can use to conduct office or personal business might have value to the physician apart from its electronic prescribing purpose; if this value is transferred to the physician in connection with referrals, the statute would be implicated.[3] Accordingly, the proposed safe harbor requires that the protected items and services be used solely to transmit or receive electronic prescribing information.

We are concerned that Donors might provide software for free or reduced cost that bundles valuable general office management, billing, scheduling, or other software with the electronic prescribing features. Such additional remuneration would not meet the "used solely" requirement and would not be protected by the proposed electronic prescribing safe harbor; such arrangements potentially raise significant concerns under the anti-kickback statute, if any purpose of the provision of the bundled software is to induce or reward the generation of Federal health care program business. However, the Recipient would not be precluded from purchasing for fair market value additional technology not protected by the proposed safe harbor.

We are mindful that hardware and connectivity services can be used for the receipt and transmission of a wide range

[3] *See, e.g.*, 56 FR 35952, 35978 (July 29, 1991) noting that a computer that has independent value to a physician may constitute an illegal inducement.

of information services, including, but not limited to, electronic prescription information, and that many people may prefer to use a single, multi-functional device, especially a hand-held, rather than multiple single-use devices. Similarly, many people may prefer to use a single connectivity service. Accordingly, we are proposing using our regulatory authority under section 1128B(b)(3)(E) of the Act to create an additional safe harbor to protect the provision by Donors to Recipients of some limited hardware (including necessary operating system software) and connectivity services that are used for more than one function, so long as a substantial use of the item or service is to receive or transmit electronic prescription information. We propose to treat operating software as integral to the hardware and distinct from other software applications that are not necessary for the hardware to operate.

Protection under this additional, separate safe harbor would not extend to the provision of items or services that are only occasionally used for electronic prescribing. The additional safe harbor would incorporate the definitions and conditions set forth in this proposed rulemaking for the MMA-mandated safe harbor and would also include conditions to address the additional risk of abuse posed by multi-functional items and services. We are soliciting public comment about the standards that should appear in an additional safe harbor for multi-functional hardware (including necessary operating system software) or connectivity services. In particular, we are soliciting public comment on methodologies for quantifying or ensuring that a substantial use of hardware and connectivity services is for the receipt or transmission of electronic prescribing information. We are also soliciting public comment on the nature and amount of any cap that we might impose on the value of the donated multi-functional hardware or connectivity services.

2. Donors and Recipients Protected by the Proposed Safe Harbor

Section 1860D–4(e)(6) of the Act describes the parties that may be protected under the new safe harbor. Specifically, protection is afforded to: (1) Hospitals with respect to members of their medical staffs; (2) group practices with respect to prescribing health care professionals who are members of the group practice; and (3) PDP sponsors and MA organizations with respect to participating pharmacists and pharmacies, as well as prescribing health care professionals. We address each category below.

Hospitals/Medical Staff—Proposed § 1001.952(x)(1)(i) would protect donations of qualifying electronic prescribing technology provided by a hospital to physicians on its medical staff. We do not intend to interpret this provision as extending to physicians who do not routinely furnish services at the hospital. We do not intend for this exception to protect remuneration that is used to induce physicians who already use other hospitals to join the medical staff of a different hospital. We are soliciting public comment on whether we should include items or services provided to other individuals or entities (*e.g.*, other health care prescribing professionals who treat patients at the hospital).

Group Practices/Members—Proposed § 1001.952(x)(1)(ii) would protect donations of qualifying electronic prescribing technology provided by a group practice to its members who are prescribing health care professionals. For consistency with the regulations promulgated in accordance with section 1877 of the Act, we propose to interpret the terms "group practice" and "members" of a group practice consistent with existing definitions in section 1877(h)(4) of the Act and the regulations at 42 CFR 411.352 and 42 CFR 411.351, respectively. Those provisions make clear that a "group practice" must be a single legal entity with unified business operations and may not be an informal affiliation of physicians and that a "member" of a group practice refers to a physician-owner or physician-employee of the group practice. A "member" of the group practice, under § 411.351 does not include independent contractors of the group or persons who are not physicians.

Because section 1877 of the Act deals only with physician referrals, application of its definition of a "member" of a group practice is not sufficient to define the full range of "prescribing health care professionals" included in section 1860D–4(e)(6) of the Act, and it is necessary for us to augment the definition in this proposed rule. Accordingly, for purposes of the proposed safe harbor, "prescribing health care professionals who are members of the group" would include prescribing professionals (*e.g.*, nurse practitioners) who are owners or employees of the group and who are authorized to prescribe under applicable State licensing laws.

Because the definition of "member" of the group practice under § 411.351 excludes independent contractors, we are soliciting comments regarding whether and how a group practice may appropriately furnish qualifying electronic prescribing technology to physicians or other prescribing health care professionals who contract with the group to furnish services to the group's patients.

We do not believe that the inclusion by Congress of group practices and their members in section 1860D–4(e)(6) of the Act was intended to imply that the provision of qualifying electronic prescribing technology by a group practice to its members necessarily required a new safe harbor under the anti-kickback statute. In many circumstances, the provision of equipment or other resources by a medical group to its member health care professionals for use in furnishing services to the group's patients would not raise fraud and abuse concerns under the anti-kickback statute. Moreover, for those situations where the statute may be implicated, many arrangements can be structured to fit in an existing safe harbor, including, for example, the safe harbors for personal services and management contracts or employee compensation at § 1001.952(d) and (i), respectively. Arrangements that do not fit in a safe harbor are not necessarily illegal under the anti-kickback statute. We believe Congress included these relationships in section 1860D–4(e)(6) of the Act simply to encourage group practices to adopt electronic prescription technology.

PDP Sponsors and MA Organizations/ Pharmacies, Pharmacists, and Prescribing Health Care Professionals—Consistent with section 1860D–4(e)(6) of the Act, proposed § 1001.952(x)(1)(iii) would protect donations of qualifying electronic prescribing technology provided by a PDP sponsor or MA organization to prescribing health care professionals, participating pharmacies, and participating pharmacists. We propose to interpret the term "PDP sponsor" and "MA organization" consistent with the Medicare Prescription Drug Benefit regulations at 42 CFR 423.4 and 42 CFR 422.2, respectively. We propose to interpret the terms "pharmacy" and "pharmacist" consistent with applicable State licensing laws. We propose to interpret "prescribing health care professionals" as physicians or other health care professionals (*e.g.* nurse practitioners) licensed to prescribe drugs in the State in which the drugs are dispensed.

Finally, we are soliciting comments on whether there is a need to protect other categories of Donors or Recipients, beyond those specifically set forth in

section 1860D–4(e)(6) of the Act, and if so, how best to address safe harbor protection for those individuals or entities. In particular, we are interested in comments addressing the types of individuals and entities that should be protected, the degree of need for protection, and the safeguards that should be imposed to protect against fraud and abuse. In general, we believe that only individuals and entities involved in the ordering, processing, filling, or reimbursing of prescriptions are likely to have sufficient need to justify inclusion in an electronic prescribing safe harbor.

3. Additional Conditions on the Provision of Qualifying Electronic Prescribing Technology

Promoting Compatibility and Interoperability—Section 1860D–4(e)(6) of the Act is integral to the electronic prescribing drug program established by section 101 of MMA. Section 1860D–4(e)(6) of the Act provides that, in order to qualify for the safe harbor, qualifying electronic prescription technology must be used to receive and transmit electronic prescription information in accordance with standards to be established by the Secretary for the Part D electronic prescription drug program. Consistent with section 1860(D)–4(e)(6) of the Act, proposed § 1001.952(x)(2) would require that the items and services be provided as part of, or be used to access, an electronic prescription drug program that complies with the standards established by the Secretary for these programs. We are soliciting comments on whether the safe harbor should protect qualifying electronic prescription technology that is used for the transmission of prescription information regarding items and services that are not drugs (*e.g.*, supplies or laboratory tests).

We believe that interoperability can serve as an important safeguard against fraud and abuse and mitigate the risk that a Donor's offer of free or reduced price technology to a Recipient could be a means of maintaining or increasing referrals from the Recipient. With interoperable electronic prescribing technology, the Recipient would be free to transmit prescriptions to any appropriate pharmacy. At this time, there are no regulatory standards to ensure that electronic prescription information products are interoperable with other products. However, we note that interoperability may be required in the future under final regulations regarding the standards for the Part D prescription drug program.

To the extent that either the hardware or software can be interoperable, the proposed regulation at § 1001.952(x)(3) would prohibit Donors or their agents from taking any actions to disable or limit that interoperability or otherwise impose barriers to compatibility. We believe this condition is necessary to limit the ability of Donors to use the provision of electronic prescribing technology to tie Recipients to the Donor. We are considering defining the term "interoperable" in this context to mean the ability of different operating and software systems, applications, and networks to communicate and exchange data in an accurate, secure, effective, useful, and consistent manner. *See generally* 44 U.S.C. 3601(6) (pertaining to the management and promotion of electronic government services). We are soliciting public comment about this approach, our definition of the term "interoperable," alternative means of ensuring the maximum level of interoperability, and the types of software currently available for electronic prescribing.

Value of protected technology—To further safeguard against fraud and abuse, we believe it would be appropriate to limit the aggregate value of the qualifying electronic prescribing technology that a Donor could provide to a Recipient under the safe harbor. We are considering whether to limit the aggregate fair market value of all items and services provided to a Recipient from a single Donor. We believe a monetary limit is appropriate and reasonable to minimize the potential for fraud and abuse. We are soliciting public comment on the amount of a cap that would adequately protect the program against abuse, the methodology used to determine the cap (for example, fixed dollar amount, percentage of the value of the donated technology, or another methodology), whether the same cap would be adequate if there were protection for the donation of multi-functional hardware and connectivity services, whether the cap should be reduced over time, and whether the cap places a disadvantage on smaller entities that do not have the financial resources of larger chains or organizations.

In addition, we are interested in public comments that address the retail and nonretail costs (*i.e.*, the costs of purchasing from manufacturers, distributors, or other nonretail sources) of obtaining electronic prescribing technology and the degree to which potential Recipients may already possess items or services that could be used for electronic prescribing. We note that CMS has received varying estimates of the costs of implementing electronic prescribing through the comment process for the CMS E-Prescribing and the Prescription Drug Program proposed rule published on February 4, 2005 in the **Federal Register** (70 FR 6256). We caution that the cost of implementing an electronic prescribing program will not correlate necessarily to the amount of any cap if one is established. Moreover, we do not expect that donors will wish necessarily to donate the total amount that the technology costs or, depending on the size of a cap, the total amount ultimately protected in the final rule. While we are interested in obtaining detailed information about the costs of the full range of technology so as to be fully informed on this matter, we do not expect that the final regulations will protect all possible costs.

We are considering various potential caps that would be no higher than any cap that may ultimately be imposed in the corresponding electronic prescribing exception under Section 1877 of the Act to be promulgated by CMS. We are considering measuring the monetary limit at fair market value to the Recipient (*i.e.*, the retail value). We believe this approach is consistent with the anti-kickback statute's intent requirement and would also minimize any competitive disadvantage for smaller entities that do not have the financial resources or potential volume of technology business of larger chains or organizations.

We are considering setting an initial cap, which would be lowered after a certain period of time sufficient to promote the initial adoption of the technology. This would have the effect of encouraging investments in the desired technology while also ensuring that, once the technology has been widely adopted and its costs have come down, the safe harbor cannot be abused to disguise payments for referrals. We are soliciting public comment about this approach. Finally, we are soliciting comments on whether and, if so, how to take into account Recipient access to any software that is publicly available either free or at a reduced price.

Other Conditions—Proposed §§ 1001.952(x)(5), (x)(6), and (x)(7) would incorporate additional conditions. Paragraph § 1001.952(x)(5) would provide that the Recipients (including their groups, employees, or staff) may not make the donation of qualifying electronic prescribing technology from Donors a condition of doing business with the Donor. Paragraph (x)(6) would provide that neither the eligibility of a Recipient to receive items and services from a protected Donor, nor the amount or nature of the items or services received, may be determined in a manner that

takes into account the volume or value of the Recipient's referrals or other business generated between the parties. This would not preclude selection criteria that are based upon the total number of prescriptions written by a Recipient, but would preclude criteria based upon the number or value of prescriptions written by the Recipient that are dispensed or paid by the Donor, as well as any criteria based on any other business generated between the parties. We are interested in comments with respect to other potential criteria for selecting medical staff recipients of donated technology. Also, the safe harbor would not protect arrangements that seek to induce a Recipient to change loyalties from other providers or plans to the Donor (*e.g.*, a hospital using an electronic prescribing technology arrangement to induce a physician who is on the medical staff of another hospital to join the Donor hospital's medical staff for a purpose of referring patients to the Donor hospital).

Proposed § 1001.952(x)(7) would require the arrangement to be in writing, to be signed by the parties, to identify with specificity the items or services being provided and their values, and to include the certification described in section II.A.1 above. To permit effective oversight of protected arrangements, the writing must cover all qualifying electronic prescribing technology provided by the Donor (or affiliated parties) to the Recipient. For example, if a Donor provides a piece of hardware under one arrangement and subsequently provides a software program, the agreement regarding the software would have to include a description of the previously donated hardware (including its nature and value).

Finally, we seek to minimize the potential for abuse and to ensure that the protected technology furthers the congressional purpose of promoting electronic prescribing as a means of improving the quality of care for all patients. We believe that any protected items and services must, to the extent possible, be usable by recipients for electronic prescribing for all patients to ensure that uninsured and non-Medicare patients receive the same benefits that the technology may engender, including reduction of errors and improvements in care. Some donated technology (such as software for tracking prescriptions or formularies of a particular MA organization's patients) may not be applicable to all patients. However, other technology (for example, hand-held devices and software that transmits prescriptions to pharmacies) is potentially usable for all patients, and recipients should not be restricted from using such technology for all patients. Accordingly, proposed § 1001.952(x)(4) would require that, where possible, recipients must be able to use the protected technology for all patients without regard to payor status.

B. Proposed Electronic Health Records Safe Harbors

Many in the hospital industry, among others, have raised the issue of the need for safe harbor protection for arrangements involving technology other than electronic prescribing. In many cases, such arrangements may qualify for safe harbor protection under existing safe harbors, such as the employee safe harbor (42 CFR 1001.952(i)), the discounts safe harbor (42 CFR 1001.952(h)), or the equipment rental safe harbor (42 CFR 1001.952(c)). Moreover, as explained above, arrangements that do not qualify for safe harbor protection are not necessarily illegal.

In general, the provision of valuable technology to physicians or other sources of Federal health care program referrals poses a heightened risk of fraud or abuse. This risk increases as the value of the technology to the Recipient increases. In the preceding discussion of the proposed safe harbor for electronic prescribing technology, we noted a number of fraud and abuse risk areas; those risk areas would also apply to the provision of free or reduced price electronic health records technology. In many respects, the provision of electronic health records technology to physicians and others poses greater risk of fraud or abuse than the provision of electronic prescribing technology; electronic health records technology is inherently more valuable to physicians in terms of actual cost, avoided overhead, and administrative expenses of an office practice.

Notwithstanding, we believe it may be possible to craft safe harbor conditions that would promote open, interconnected, interoperable electronic health records systems that help improve the quality of patient care and efficiency in the delivery of health care to patients, without protecting arrangements that serve as marketing platforms or mechanisms to influence inappropriately clinical decision making or tie physicians to particular providers or suppliers. The potential patient care and system efficiency benefits of interoperable and certified electronic health records technology are discussed in detail in the preamble to CMS' contemporaneous notice of proposed rulemaking for an exception under section 1877 and are not repeated here. Full interoperability of electronic health records technology would help reduce, but not eliminate, some risks of program and patient fraud and abuse (such as improper patient steering) by ensuring that donors would not be able to lock recipients into using the donor's systems.

Currently, uniform interoperability standards for electronic health records and certification requirements necessary to ensure interoperability do not exist. Accordingly, we are considering an incremental approach to safe harbor protection in this area. Specifically, we are proposing using our legal authority at section 1128B(b)(3)(E) of the Act to promulgate two safe harbors related to electronic health records software and directly related training services that are necessary and used to receive, transmit, and maintain electronic health records of the entity's or physician's patients. The first safe harbor would apply to donations made before adoption by the Secretary of product certification criteria, including criteria for interoperability, functionality, and privacy and security of electronic health records technology. These conditions are also referred to herein as "product certification criteria." (For purposes of this rulemaking, this safe harbor will be referred to as the "pre-interoperability" safe harbor.) Once standards are identified and product certification criteria are developed for electronic health records and adopted by the Secretary, we believe some enhanced flexibility in the conditions applicable under a safe harbor for electronic health records may be appropriate, provided the safe harbor conditions as a whole sufficiently guard against fraud and abuse. A second safe harbor would apply to donations made after product certification criteria have been adopted. (For purposes of this rulemaking, this second safe harbor will be referred to as the "post-interoperability" safe harbor.) The post-interoperability safe harbor would recognize the reduction in the risk of fraud and abuse that may result from the ability to ensure that free or reduced price products provided under the safe harbor are interoperable and certified.

Unlike electronic prescribing, Congress provided no direction with respect to any safe harbor for electronic health records. As discussed more fully below, any safe harbor of electronic health records technology will necessarily involve consideration of a number of important variables. Given this, as well as the inherent risk of fraud and abuse typically posed by gifts of free items and services to potential referral sources, we believe we do not

have sufficient information at this time to draft appropriate safe harbor language. However, we are soliciting public comments on the proposed scope and conditions for electronic health records safe harbors, as outlined below.

1. Proposed Pre-Interoperability Safe Harbor

We are considering incorporating the following features in the pre-interoperability safe harbor.

Covered Technology—The pre-interoperability safe harbor would protect electronic health records software (that is, software that is essential to and used solely for the transmission, receipt, and maintenance of patients' electronic health records and electronic prescription drug information) and directly-related training services, provided that the software includes an electronic prescribing component. The required electronic prescribing component must consist of software that is used to receive and transmit electronically prescription drug information in accordance with standards established by the Secretary under the Part D electronic prescription drug program. We are soliciting comments on whether the exception should permit the electronic prescribing component of electronic health records software to be used for the transmission of prescription information regarding items and services that are not drugs (for example, supplies or laboratory tests). Additionally, we are soliciting comments with respect to whether we should require that electronic health records software include a computerized provider order entry ("CPOE") component. The pre-interoperability safe harbor would not protect the provision of other types of technology, including, but not limited to, hardware, connectivity services, billing, scheduling, or other similar general office management or administrative software services, or software that might be used by a Recipient to conduct personal business or business unrelated to the Recipient's medical practice. While we would protect necessary training services in connection with the software, we would not protect the provision of staff to Recipients or their offices. We are mindful that there may be particular constituencies, such as rural area providers, that lack sufficient hardware or connectivity services to implement effective electronic health records systems. We are soliciting comments addressing these special circumstances.

Any safe harbor would need to define "electronic health records." As with electronic prescribing technology, we are interested in public comments that address the software functions that should be included in the definition of "electronic health records"; the types of software that should be protected; the retail and nonretail cost of such software; the manner in which such software is currently marketed; methods for defining the scope of protected software; and safeguards that might be imposed (either by definition or separately) to ensure that provision of the software cannot be used to camouflage unlawful payments for referrals or to tie impermissibly Recipients to Donors in a position to benefit from the Recipient's referrals.

The pre-interoperability safe harbor would require that the protected software and training services be "necessary" consistent with our interpretation of the term in section II.A.1, and we are considering including comparable documentation provisions, including comparable certifications by Recipients, to ensure that the safe harbor does not protect the provision of items or services that are technically or functionally equivalent to items and services the Recipient currently possesses or has obtained. As with electronic prescribing technology, we are concerned that there may be a risk that Recipients would intentionally divest themselves of functionally or technically equivalent technology that they already possess to shift costs to Donors, and we are soliciting public comments on whether and how to address this situation.

Interoperability—In addition to requiring that the electronic prescribing component of the protected software comply with standards established by the Secretary for the Part D electronic prescription drug program, it would be important that neither Donors nor their agents take any actions to disable or limit interoperability of any component of the software or otherwise impose barriers to compatibility. We are also considering requiring that protected software comply with relevant Public Health Information Network preparedness standards, such as those related to BioSense. We are soliciting comments on these and other appropriate qualifications. In addition, electronic health records lack the program and beneficiary protections that exist under the Part D prescription drug program and related electronic prescription standards. We are considering including in the final safe harbor conditions designed to replicate these protections for electronic health records, including quality assurance measures. We are soliciting public comments on the most appropriate way to do so.

Value of the Protected Technology—As with electronic prescribing, we are proposing limiting the aggregate value of the protected software and training services that a Donor could provide to a Recipient. The limit under the proposed pre-interoperability safe harbor would be directly related to the limit adopted in connection with the electronic prescribing safe harbor discussed at II.A.3. There, we note various alternatives we are considering in connection with a limiting cap and outline issues about which we are soliciting public comments. We are considering similar alternatives, and are interested in similar comments, in connection with a safe harbor for electronic health records. Given that electronic health records technology has high value to Recipients, we are considering several approaches, including: (1) An aggregate dollar cap; (2) a cap that would be set at a percentage of the value of the technology to the Recipient (thus requiring Recipients to share a portion of the costs and reducing windfall benefits to Recipients); or (3) a cap set at the lower of a fixed dollar amount or a percentage of the value of the technology to the Recipient.

We are soliciting comments on how a cap under a safe harbor for electronic health records would relate to a cap under proposed § 1001.952(x) and how the value of technology provided under the final safe harbors would be aggregated. We are concerned that Donors may abuse the proposed exceptions for electronic prescribing items and services and electronic health records software and training services by selectively relying on both exceptions to maximize the value of technology provided to Recipients as a means of disguising payments for referrals. We believe conditions should be included in the final regulation to prevent this abuse and are considering requiring an overall cap on value, as well as documentation requirements that integrate all technology provided under the final exceptions. We are considering requiring an overall cap on the value of donated technology (such that the value of technology donated under the electronic prescribing safe harbor would count towards the total value of the software protected under the pre-interoperability safe harbor), as well as documentation requirements that integrate all technology provided under any safe harbor.

Another concern, particularly in light of the cost of electronic health records technology, is that Donors may attempt

to shift the financial burden of providing electronic health records technology to the Federal health care programs or beneficiaries. Accordingly, we would likely include a safe harbor condition that would prohibit such cost shifting. Finally, we are soliciting comments on whether and, if so, how to take into account Recipient access to any software that is publicly available either free or at a reduced price.

Donors and Recipients—The pre-interoperability safe harbor would protect the same categories of Donors and Recipients as the proposed § 1001.952(x)(1) and would define them similarly. We believe that Donors should be limited to hospitals, group practices, PDP sponsors, and MA organizations, because they have a direct and primary patient care relationship and therefore have a central role in the health care delivery infrastructure that justifies safe harbor protection for the furnishing of electronic health records technology that would not be appropriate for other types of providers and suppliers, including providers and suppliers of ancillary services. Moreover, hospitals, group practices, PDP sponsors, and MA organizations are potentially in a better position to promote widespread use of electronic health records technology that has the greatest degree of openness and interoperability. We do not believe that providers and suppliers of ancillary services, such as laboratories, have a comparable stake in advancing the goal of interoperable electronic health records for patients. In our experience, laboratories and others have used free or deeply discounted goods, such as computers and fax machines, to influence referrals improperly. Longstanding OIG guidance makes clear that gifts of equipment to referral sources that have value to the physicians are highly suspect under the anti-kickback statute.[4] We are interested in comments regarding whether other categories of Donors or Recipients should be included and why. We are also interested in comments with respect to whether different or alternative conditions should apply to any category of donor.

Other Conditions—Finally, to further reduce the risk of fraud and abuse, we would incorporate in the pre-interoperability safe harbor for electronic health records certain other conditions described above in connection with proposed § 1001.952(x). These conditions would include the requirement at proposed 1001.952(x)(6) that neither the eligibility of a recipient to receive items and services from a donor, nor the amount and nature of the items and services received, may be determined in a manner that takes into account the volume or value of the recipient's referrals to the donor or other business generated between the parties. In addition, we would include the proposed anti-solicitation provision (§ 1001.952(x)(5)), the proposed documentation requirements (§ 1001.952(x)(7)), and the proposed all-payors requirement (§ 1001.952(x)(4)).

Sunset Provision—We are considering whether to sunset the pre-interoperability safe harbor discussed here once the post-interoperability safe harbor discussed in the next section becomes effective.

Our intent is that the proposed pre-interoperability safe harbor outlined above would promote the adoption of open, interconnected, interoperable electronic health records and electronic prescribing systems. We are interested in comments addressing whether this pre-interoperability safe harbor protection may have the unintended effect of impeding the beneficial spread of interoperable electronic health records systems by promoting closed or isolated systems or systems that effectively tie physicians to particular providers or suppliers. For example, a hospital that donates expensive technology to a physician may exercise control over that physician sufficient to preclude or discourage other systems or health plans from having access to the physician for their own networks.

2. Proposed Post-Interoperability Safe Harbor

The adoption of uniform interoperability standards for electronic health records, as well as product certification criteria to ensure that products meet those standards, will help prevent certified technology from being used by unscrupulous parties to lock in streams of referrals or other business. While interoperability does not vitiate the risk (we are concerned that parties may use the offer or grant of free technology itself as a vehicle to capture referrals), it may mitigate the risk sufficiently to warrant different or modified safe harbor conditions. It would be important that the protected electronic health records software be certified in accordance with product certification criteria adopted by the Secretary, and that the electronic prescribing component comply with electronic prescribing standards established by the Secretary under the Part D program, to the extent those standards are not incorporated into the product certification criteria. Once product certification criteria are adopted for interoperable electronic health records technology, we intend to finalize a post-interoperability safe harbor.

In particular, we are considering a post-interoperability safe harbor that would include the conditions described above in section II.B.1 in connection with the pre-interoperability safe harbor, with the following differences. First, we are considering whether the safe harbor should protect additional software applications, provided electronic prescribing and electronic health records are the core functions of the protected software. We intend to protect systems that improve patient care rather than systems comprised solely or primarily of technology that is incidental to the core functions of electronic prescribing and electronic health records. As with the pre-interoperability safe harbor, technology protected under this safe harbor must include an electronic prescribing component and may not be used by a Recipient solely to conduct personal business or business unrelated to the Recipient's medical practice. We are soliciting public comments with respect to whether we should also or instead require that electronic health records software include a CPOE component. We are also soliciting public comments on what types of software should be protected under the safe harbor and methods for ensuring that electronic prescribing and electronic health records are the core functions of the donated technology.

Second, we are considering whether to protect categories of Donors or Recipients, beyond those specifically set forth in section 1860D–4(e)(6) of the Act and whether different or alternative conditions should apply to any category of permissible Donors or Recipients. We are interested in comments addressing the types of individuals or entities that should be protected, the degree of need for protection, and the safeguards that should be imposed to protect against fraud and abuse.

Third, in light of the enhanced protection against some types of fraud and abuse offered by certified, interoperable systems, we are considering permitting Donors to use selective criteria for choosing Recipients, provided that neither the eligibility of a recipient, nor the amount or nature of the items or services, is determined in a manner that directly takes into account the volume or value of referrals or other business generated between the parties. We are considering enumerating several selection criteria

[4] *See* supra note 3.

which, if met, would be deemed not to be directly related to the volume or value of referrals or other business generated between the parties (for example, a determination based on the total number of hours that the recipient practices medicine or a determination based on the size of the recipient's medical practice). Selection criteria that are based upon the total number of prescriptions written by a Recipient would not be prohibited, but the proposed regulation would prohibit criteria based upon the number or value of prescriptions written by the Recipient that are dispensed or paid by the Donor, as well as any criteria directly based on any other business generated between the parties. The safe harbor would not protect arrangements that seek to induce a Recipient to change loyalties from other providers or plans to the Donor. We are soliciting public comments on criteria for selecting recipients of the donated technology.

We expect that this approach would ensure that donated technology can be targeted at Recipients who use it the most in order to promote a public policy favoring adoption of electronic health records, while discouraging problematic direct correlations with Federal health care program referrals (for example, a hospital offering a physician 10 new computers for every 500 referrals of Medicare-payable procedures.) This approach would be a deliberate departure from other safe harbors based on the unique public policy considerations surrounding electronic health records and the Department's goal of encouraging widespread adoption of interoperable electronic health records. We caution, however, that outside of the context of electronic health records, as specifically addressed in this proposed rule, both direct and indirect correlations between the provision of free goods or services and the volume or value of referrals or other business generated between the parties are highly suspect under the anti-kickback statute (and may evidence outright violations) and do not meet the requirements of other safe harbors under the statute or 42 CFR 1001.952.

We are interested in public comments about this approach to selecting Recipients, including whether there may be unintended consequences that would inhibit the adoption of interoperable technology or lead to abusive arrangements and, if so, whether more or less restrictive conditions are appropriate.

Fourth, we are considering a cap on the value of the donated interoperable software that may be larger than the cap under the pre-interoperability safe harbor. With respect to a limiting cap, we are considering issues similar to those discussed in the preceding sections on the proposed electronic prescribing safe harbor and the proposed pre-interoperability safe harbor, and are interested in comments on those same issues as they might relate to a post-interoperability safe harbor.

In sum, there are a number of ways in which a post-interoperability safe harbor might be structured, and flexibility in one condition might require tightening of another. We are interested in comments on the overall approach outlined above and how the various conditions might be crafted to ensure that the safe harbor conditions, taken as a whole, provide sufficient protection against fraud and abuse.

C. Additional Solicitation of Public Comments: Community-Wide Health Information Systems

The regulations promulgated in accordance with section 1877 of the Act include an exception at 42 CFR 411.357(u) for the provision of information technology items and services by certain entities to physicians to enable the physicians to participate in a community-wide health information system designed to enhance the overall health of the community. The systems must facilitate access to, and sharing of, electronic health care records and any complementary drug information systems, general health information, medical alerts, and related information for patients served by community providers and practitioners. Certain other conditions must also be satisfied. We have received a number of comments in response to our 2004 Annual Solicitation of New Safe Harbors and Special Fraud Alerts (69 FR 71766; December 10, 2004) requesting that we create a comparable safe harbor under the anti-kickback statute. While we have not determined whether such a safe harbor is needed or prudent, we are interested in public comments at this time addressing the need for, and conditions that should pertain to, such a safe harbor. Because of the close relationship between the topic of this proposed rulemaking and the suggested new safe harbor for community-wide health information systems, we believe it appropriate to solicit comments on the latter issue as part of this rulemaking.

III. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act (RFA) of 1980, and Executive Order 13132.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects (*i.e.*, $100 million or more in any given year).

This is not a major rule, as defined at 5 U.S.C. 804(2), and it is not economically significant, since it would not have a significant effect on program expenditures, and there are no additional substantive costs to implement the resulting provisions. This proposed rule would create new safe harbors under the anti-kickback statute for certain entities to provide technology-related items and services to certain parties for electronic prescribing and health record purposes. This proposal would merely create safe harbors under the anti-kickback statute for arrangements under which certain entities would help physicians and certain other individuals and entities with their electronic prescribing and health records expenses. In doing so, this rulemaking would impose no requirements on any party. Parties may voluntarily seek to comply with this provision so that they have assurance that their actions will not subject them to any enforcement actions under the anti-kickback statute. The safe harbors should facilitate the adoption of electronic prescribing and health records technology by filling a gap rather than creating the primary means by which physicians will adopt these technologies. In other words, we do not believe that Donors will fund all of the health information technology used by Recipients. However, since we cannot predict which entities will offer these items and services, we cannot determine with certainty the aggregate economic impact of this proposed rulemaking. We do not believe, however, that the impact of this electronic prescribing safe harbor rule would approach $100 million annually. Therefore, this proposed rule is not a major rule. We note that this proposed rule would remove a perceived obstacle to the provision of qualifying electronic prescribing technology and electronic health records software and directly related training services (for purposes of this Regulatory Impact Statement, herein

referred to as "qualifying health information technology") by certain entities. Although this proposed rule applies to donations of qualifying health information technology by hospitals, group practitioners, PDP sponsors, and MA plans, we do not expect that many group practices, PDP sponsors or MA plans would use these proposed safe harbors (and in some cases, existing safe harbors may also be available or parties may use the OIG's advisory opinion process). Notwithstanding, regardless of whether donations would be allowed under existing safe harbors or those that are included in this proposed rule, we encourage commenters to provide information on the costs that would likely be incurred by Donors that would choose to furnish qualifying health information technology to Recipients, as well as other related costs that would likely be incurred by both Donors and Recipients, such as costs incurred for changes in office procedures.

Our analysis under Executive Order 12866 of the expenditures that entities may choose to make under this proposed rule is restricted by potential effects of outside factors, such as technological progress and other market forces, future certification standards, and the companion proposed physician self-referral exceptions. Furthermore, both the costs and potential savings of electronic prescribing, EHRs, computerized physician order entry, and billing and scheduling software vary to the extent to which each element operates as a stand alone system or as part of an integrated system. We welcome comments that will help identify both the independent and synergistic effects of these variables. As noted in the electronic prescribing proposed rule, which was published on February 4, 2005 (70 FR 6256, 6268–6273), the Department expects that donors may experience net savings with electronic prescribing in place and patients would experience significant, positive health effects. We have not repeated that analysis in this proposed rule. Moreover, we have not replicated the extensive analysis of costs, benefits, and potential impact on patient care contained in the companion physician self-referral proposed rule. We believe the analysis set forth there may be similarly relevant to the potential impact of the proposed safe harbors. As also noted there, we assume that qualifying health information technology costs and benefits will be realized sooner or later. Even without government intervention, there is a lively market today, and as consensus standards evolve, that market will grow. The question as to the regulatory impact for this proposed rule is: to what extent would the use of these proposed anti-kickback safe harbors accelerate adoption of electronic prescribing and EHRs, taking into account available policy instruments, notably the development of interoperable standards? The baseline information is uncertain. As described in more detail in the physician self-referral proposed rule, there are numerous estimates of adoption of electronic prescribing by health plans, hospitals, physicians, and (for prescribing of drugs only) pharmacies. As noted there, these estimates are highly sensitive to assumptions. For example, the maximum allowed remuneration might be as little as half as much or as much as twice as much. The rate of adoption might be higher or lower than estimated. The proportion receiving remuneration could be lower or higher than estimated, depending on willingness of hospitals, group practices, MA organizations and PDP sponsors to subsidize investments in health information technology. We are interested in comments on whether information exists that would allow more definite estimates as to the effects of these proposed safe harbors.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess the anticipated costs and benefits of Federal mandates before issuing any rule that may result in the mandated expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars (a threshold adjusted annually for inflation and now approximately $120 million). This proposed rule would impose no mandates. Any actions taken under this rule would be voluntary. Furthermore, such actions are likely to result in cost savings, not net expenditures, and any expenditures would be undertaken by government-owned hospitals in their business capacity, without any necessary impact on state, local, or tribal governments, or their expenditure budgets, as such.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and Government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any one year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this proposed rule would not have a significant impact on small businesses. We base our decision on the fact that we expect the rulemaking on electronic prescribing and health records to be beneficial to the affected entities because it will allow them to better reap the benefits of increased use of electronic prescribing and health records technology, including reduction of medical errors and increased operational efficiencies.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule would not have a substantial negative impact on the operations of a substantial number of small rural hospitals. If this rule has any impact, it would be a substantial positive impact in reducing costly medical errors and increasing operational efficiencies through the use of technology.

Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local Governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local Governments, the requirements of Executive Order 13132 are not applicable.

The Office of Management and Budget (OMB) has reviewed this rule in accordance with Executive Order 12866.

IV. Paperwork Reduction Act

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in rulemaking.

The safe harbors promulgated in this proposed rule impose some minimal

information collection requirements. Specifically, for an arrangement to fall within the proposed safe harbors would have to fulfill the following documentation requirements: (1) There must be a writing signed by the parties; (2) the written agreement must identify the items or services being provided and their values; (3) the written agreement must incorporate or cross-reference prior relevant agreements; and (4) the written agreement must contain a certification by the Recipient that the items and services to be provided do not duplicate any existing items or services the Recipient already has or has obtained from another source.

Compliance with a safe harbor under the Federal anti-kickback statute is voluntary, and no party is ever required to comply with a safe harbor. Instead, safe harbors merely offer an optional framework for structuring business arrangements to ensure compliance with the anti-kickback statute. All parties remain free to enter into arrangements without regard to a safe harbor, so long as the arrangements do not involve unlawful payments for referrals under the anti-kickback statute. Thus, we believe that the documentation requirements necessary to enjoy safe harbor protection do not qualify as an added paperwork burden in accordance with 5 CFR 1320.3(b)(2), because the requirements are consistent with usual and customary business practices and because the time, effort, and financial resources necessary to comply with the requirements would largely be incurred in the normal course of business activities.

We are soliciting public comments with respect to these requirements. Comments on these requirements should be sent to the following address within 60 days following the **Federal Register** publication of this interim final rule:

OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, NW., Washington, DC 20053, FAX: (202) 395–6974.

V. Public Inspection of Comments and Response to Comments

Comments will be available for public inspection beginning November 10, 2005 in Room 5518, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week (Federal holidays excepted) between the hours of 9 a.m. and 4 p.m., (202) 619–0089.

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and will respond to the comments in the preamble of the final rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare.

Accordingly, 42 CFR part 1001 would be amended as set forth below:

PART 1001—[AMENDED]

1. The authority citation for part 1001 would be amended to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395w–104(e)(6), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.952 would be amended by republishing the introductory text, and by adding (x) to read as follows:

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(x) *Electronic Prescribing Items and Services.* As used in section 1128B of the Act, "remuneration" does not include nonmonetary remuneration (consisting of items and services in the form of hardware, software, or information technology and training services) necessary and used solely to receive and transmit electronic prescription information, if all of the following conditions are met:

(1) The items and services are provided—

(i) In the case of a hospital, by the hospital to physicians who are members of its medical staff;

(ii) In the case of a group practice, by the group practice to prescribing health care professionals who are members of the group practice; and

(iii) In the case of a PDP sponsor or MA organization, by the sponsor or organization to pharmacists and pharmacies participating in the network of such sponsor or organization and to prescribing health care professionals.

(2) The items and services are donated as part of, or are used to access, an electronic prescription drug program that meets the applicable standards under Medicare Part D at the time the items and services are furnished.

(3) The donor (or any person on the donor's behalf) must not take any actions to limit or restrict unnecessarily the use or compatibility of the items or services with other electronic prescription information items or services or electronic health information systems.

(4) With respect to items or services that are of the type that can be used for any patient without regard to payor status, the donor may not restrict, or take any action to limit, the recipient's right or ability to use the items or services for any patient.

(5) The prescribing health care professional, pharmacy, or pharmacist (or any affiliated group, employee, or staff member) does not make the receipt of items or services a condition of doing business with the donor.

(6) Neither the eligibility of a prescribing health care professional, pharmacy, or pharmacist for the items or services, nor the amount or nature of the items or services, is determined in a manner that takes into account the volume or value of referrals or other business generated between the parties.

(7) The arrangement is set forth in a written agreement that—

(i) Is signed by the parties;

(ii) Specifies the items or services being provided and the value of those items and services;

(iii) Covers all of the electronic prescribing items and services to be furnished by the donor (or affiliated parties) to the recipient; and

(iv) Contains a certification by the recipient that the items and services are not technically or functionally equivalent to items and services the recipient already possesses or has obtained. The recipient will be deemed not to comply with this subparagraph if the certification the recipient provides is not full, complete, and accurate, to the best of the recipient's knowledge.

(8) The donor did not have actual knowledge of, and did not act in reckless disregard or deliberate ignorance of, the fact that the recipient possessed or had obtained items and services that were technically or functionally equivalent to those donated by the donor.

Note to Paragraph (x): For purposes of paragraph (x) of this section, group practice shall have the meaning set forth at § 411.352; members of a group practice shall mean all persons covered by the definition of "member of the group practice" at § 411.351, as well as other prescribing health care professionals who are owners or employees of the group practice; prescribing health care professional shall mean a physician or other

health care professional licensed to prescribe drugs in the State in which the drugs are dispensed; PDP sponsor or MA organization shall have the meanings set forth at §§ 423.4 and 422.2, respectively.

Dated: March 15, 2005.

Daniel R. Levinson,

Acting Inspector General.

Approved: August 12, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–20315 Filed 10–5–05; 10:49 am]

BILLING CODE 4150–01–P

Notices

Federal Register
Vol. 70, No. 195
Tuesday, October 11, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agriculture Research Service

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: October 24–25, 2005, 8 a.m. to 5 p.m. on October 24 and 8 a.m. to 4 p.m. on October 25. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Room 107A, USDA Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW., Washington, DC 2025. Members of the public should enter the building through the Jefferson Drive entrance. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The tenth meeting of the AC21 has been scheduled for October 24–25, 2005. The AC21 consists of 19 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as "ex officio" members.

At this meeting, one new AC21 member will be introduced and the Committee will continue ongoing work towards completion of a paper examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years, specifically to review and revise a new draft Chair's text for the paper.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html.* On October 24, 2005, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: October 5, 2005.

Bernice Slutsky,

Special Assistant for Biotechnology.

[FR Doc. 05–20334 Filed 10–7–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to review funded projects, discuss 2006 project submittal process and new committee appointments regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditures of Payments to States Fresno County Title II funds.

DATES: The meeting will be held November 1 from 6:30 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Sierra National Forest, 1600 Tollhouse Road, Clovis, California, 93612. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements and the Committee staff before or after the meeting.

Public sessions will be provided and individuals who made written requests by August 10, 2004 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Call for new projects process; (2) Recruitment for new members; (3) Review of funded projects and (4) Public comments.

Dated: October 4, 2005.

Ray Porter,

District Ranger.

[FR Doc. 05–20319 Filed 10–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, November 30, 2005 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on November 30, 2005 from 10 a.m. to 1 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Larry Timchak, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on November 30, 2005, begins at 10 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include looking at funding for this upcoming year, briefed on project status from last year's approved projects, and welcoming the new Forest Supervisor/Designated Federal Officer.

Dated: October 3, 2005.

Lawrence A. Timchak,

Caribou-Targhee Forest Supervisor.

[FR Doc. 05–20320 Filed 10–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Seminole Electric Cooperative, Inc.; Notice of Intent To Hold Public Scoping Meeting and Prepare a Supplemental Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public scoping meeting and prepare an Environmental Impact Statement (EIS).

SUMMARY: The Rural Utilities Service (RUS) intends to hold a public scoping meeting and prepare a supplemental Environmental Impact Statement (EIS) in connection with possible impacts related to a project proposed by Seminole Electric Cooperative, Inc. (SECI), with headquarters in Tampa, Florida. The proposal consists of the construction of a nominal 750 megawatt coal-based electrical generating unit at the Seminole Generating Station (SGS). The Station is located in Putnam County, Florida, about six miles north of Palatka. SGS Unit 3 will be constructed near the existing SGS Units 1 and 2. The new unit can be readily accommodated on the existing site. The financing and construction of the SGS Unit 1 and 2 was evaluated in a previous EIS. SECI is requesting RUS provide financing for the proposed project.

DATES: RUS will conduct a public scoping meeting in an open-house format, seeking the input of the public and other interested parties, on October 20, 2005, 3 p.m. to 7 p.m., at the Campbell Center at Ravine Gardens State Park, 1600 Twigg Street, Palatka, Florida 32177, 386–329–3721.

A scoping document for the preparation of a supplemental environmental impact statement will be available for review at the public scoping meeting. The document also is available for public review at RUS at the address provided in this notice, at Seminole Electric Cooperative, 16313 North Dale Mabry Highway, Tampa, Florida 33618, at Seminole Generating Station, 890 North Highway 17, Palatka, Florida 32177, and at,

Putnam County Library System: Headquarters Palatka Library, 601 College Road, Palatka, Florida 32177–3873.

Crescent City Public Library Branch, 610 N. Summit, Crescent City, Florida 32212–2148.

Bostwick Community Library Branch, 125 Tillman Street, P.O. Box 489, Bostwick, Florida 32007.

FOR FURTHER INFORMATION CONTACT: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Development, Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, telephone: (202) 720–0468 or e-mail: *stephanie.strength@wdc.usda.gov,* or James Frauen, Manager of Environmental Affairs, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa, Florida 33688–2000 or e-mail: *jfrauen@seminole-electric.com.*

SUPPLEMENTARY INFORMATION: SECI proposes to construct and operate a nominal 750-megawatt coal-based electric generating facility (Unit 3) at its existing Seminole Generating Station, located in Putnam County, Florida, about six miles north of Palatka on U.S. Highway 17. SECI intends to license the construction and operation of SGS Unit 3 in conjunction with the continued operation of the existing Units 1 and 2. Unit 1 began commercial operation in January 1984 and Unit 2 began commercial operation in January 1985. Unit 3, a high efficiency, advanced technology coal unit with state of the art emission controls, will be constructed near Units 1 and 2. Unit 3 proposes to start commercial operation by May 1, 2012. It has been determined that a third unit can be readily accommodated on the existing plant site. Fuel (coal and petroleum coke) for all three units will continue to be delivered to the site by rail.

The Unit 3 project is estimated to cost $1.2 billion, which includes approximately $440 million for environmental controls. In addition, Seminole will also invest more than $200 million for advanced air emissions controls on Units 1 and 2 to remove additional amounts of sulfur dioxide, nitrogen oxide, and mercury. A new zero discharge system will be installed to reuse and evaporate process wastewater from all three units resulting in further improvement of the quality of the Station's water discharge to the St. Johns River.

Alternatives considered include no action, purchased power, renewable energy sources, distributed generation, and alternative site locations. Comments regarding the proposed project may be submitted (orally or in writing) at the public scoping meetings or in writing for receipt no later than November 21, 2005, to RUS at the address provided in this notice.

As mentioned previously, the financing and construction of the existing SGS Units 1 and 2 were evaluated in a previous EIS prepared by the Rural Electrification Administration. The final EIS and Record of Decision for the Seminole Plant Unit 1 and 2 and Associated Transmission Facilities were published in 1979. This EIS evaluated the environmental effects of the construction of two 600 MW coal-fired electric generating units and associated 230 kV transmission facilities. This EIS will be supplemented to evaluate the environmental effects of the proposed action.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of a Draft Supplemental EIS. The Draft Supplemental EIS will be available for review and comment for 45 days. A Final Supplemental EIS will then be prepared that considers all comments received. The Final Supplemental EIS will be available for review and comment for 30 days. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Public notices announcing the availability of the Draft and Final Supplemental EIS and the ROD will be

published in the **Federal Register** and in the Palatka Daily News.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR part 1794).

Dated: October 4, 2005.

Glendon D. Deal,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. 05–20309 Filed 10–7–05; 8:45 am]

BILLING CODE 3410–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of an explosion and fire which occurred at BP's Texas City refinery on March 23, 2005, the United States Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a community meeting starting at 6 p.m. local time on Thursday, October 27, 2005, at the Charles T. Doyle Convention Center, 2010 5th Avenue North, Texas City, Texas 77590. At the meeting CSB staff will present to the Board the preliminary results of their investigation into this incident. There will be a public comment period after the investigators' presentation.

At approximately 1:20 p.m. on Wednesday, March 23rd, a series of explosions occurred at the BP Texas City refinery during the restarting of a hydrocarbon isomerization unit. Fifteen workers were killed and about 170 others were injured. Many of the victims were in or around work trailers located near a blowdown drum and stack that were open to the atmosphere. The explosions occurred when a distillation tower flooded with hydrocarbons and was over pressurized, resulting in a release of flammable hydrocarbons from the blowdown stack. After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether the preliminary facts presented necessitate any recommendations prior to the final completion of the Board's investigative report.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered a final staff presentation and approved the staff report next year will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 05–20443 Filed 10–6–05; 2:28 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Zone Management Program Administration.

Form Number(s): None.

OMB Approval Number: 0648–0119.

Type of Request: Regular submission.

Burden Hours: 17,974.

Number of Respondents: 35.

Average Hours Per Response: 35.

Needs and Uses: Coastal zone management grants provide funds to states and territories to implement federally-approved coastal zone management plans; revise assessment documents and multi-year strategies; submit requests to approve amendments or program changes; submit section 306A documentation on their approved coastal zone management plans; and submit coastal management performance measurement data. The funds are also provided to states and territories to develop their coastal management documents. The information submitted is used to determine if activities achieve national coastal management and enhancement objectives and if states and territories are adhering to their approved plans.

Affected Public: State, local or tribal government.

Frequency: Annually, semi-annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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

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

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

Dated: October 5, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–20339 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Membership of the Office of the Secretary Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership on the Office of the Secretary Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), DOC announces the appointment of persons to serve as members of the Office of the Secretary (OS) Performance Review Board (PRB). The OS/PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members. The appointment of these members to the OS/PRB will be for a period of 24 months.

DATES: The effective date of service of appointees to the Office of the Secretary Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mary King, Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3321.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the OS/PRB are set forth below by organization:

Department of Commerce, Office of the Secretary, 2005–2007, Performance Review Board Membership

Office of the Secretary

Fred L. Schwien, Director, Executive Secretariat; David S. Bohigian, Deputy

Director, Office of Policy and Strategic Planning; Richard Yamamoto, Director, Office of Security (Alternate).

Office of Assistant Secretary for Administration

Lisa Casias, Deputy Director for Financial Policy.

Economic Development Administration

Mary Pleffner, Deputy Assistant Secretary for Management Services and CFO.

National Oceanic and Atmospheric Administration

John E. Jones, Jr., Deputy Assistant Administrator for Weather Services.

Dated: October 5, 2005.

Mary King,

Director, Office of Executive Resources.

[FR Doc. 05–20348 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Notice of Rescission of Antidumping Duty New Shipper Review: Honey from the People's Republic of China

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

SUMMARY: In response to a request from Kunshan Xin'an Trade Co., Ltd., the Department of Commerce ("the Department") initiated a new shipper review of the antidumping duty order on honey from the People's Republic of China. The period of review ("POR") is December 1, 2003, through November 30, 2004. For the reasons discussed below, we are rescinding this new shipper review.

EFFECTIVE DATE: October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Anya Naschak, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C., 20230; telephone: (202) 482–6375.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under this order is dispositive.

Background

On December 22, 2004, the Department received a request for a new shipper review ("Xinan New Shipper Request") from Kunshan Xin'an Trade Co., Ltd. ("Xinan PRC"). On January 31, 2005, the Department initiated this new shipper review for the period of review ("POR") December 1, 2003, through November 30, 2004. *See Honey from the People's Republic of China: Initiation of Antidumping New Shipper Review*, 70 FR 6412 (February 7, 2005). On February 1, 2005, we issued the standard section A, C, and D questionnaire to Xinan PRC and its claimed U.S. affiliate, Xin'an USA, Inc. ("Xinan USA") (collectively, "Xinan"). On March 10, 2005, and March 28, 2005, we received Xinan's response to sections A, C, and D of the Department's questionnaire.

On July 18, 2005, the Department extended the time limit for the completion of the preliminary results of this review by 45 days from the original July 30, 2005, deadline, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), and section 351.214(i)(2) of the Department's regulations. *See Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of 2003/2004 New Shipper Review*, 70 FR 42033 (July 26, 2005).

On August 10, 2005, the Department completed its preliminary *bona fides* analysis of Xinan's single sale to the United States and stated the Department's preliminary intention to rescind the new shipper review of Xinan, finding that Xinan's single sale to the United States was not a *bona fide* transaction. See Memorandum from James C. Doyle to Barbara E. Tillman: *Bona Fide* Analysis for Kunshan Xin'an Trade Co., Ltd.'s Sale in the New Shipper Review of Honey from the People's Republic of China, dated August 10, 2005 ("*Bona Fides* Memo"). The Department allowed interested parties an opportunity to provide comments on the Department's *Bona Fides* Memo, as well as the information placed on the record of review as attachments to the memo. Xinan provided comments on the Department's Bona Fides Analysis Memo on August 25, 2005, and the American Honey Producers and the Sioux Honey Association (collectively, "petitioners") provided rebuttal comments on August 31, 2005.

On September 13, 2005, the Department extended the time limit for the completion of the preliminary results of this review by an additional 20 days, in accordance with section 751(a)(2)(B)(iv) of the Act, and section 351.214(i)(2) of the Department's regulations. *See Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of 2003/2004 New Shipper Review*, 70 FR 55109 (September 20, 2005).

Rescission of Review

Concurrent with this notice, we are issuing our memorandum detailing our analysis of the *bona fides* of Xinan's U.S. sale and our decision to rescind based on the totality of the circumstances. *See* Memorandum from James C. Doyle, Director, Office 9, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Operations: *Bona Fides* Analysis and Rescission of New Shipper Review of Honey from the People's Republic of China for Kunshan Xin'an Trade Co., Ltd., dated October 3, 2005 ("Rescission Memo").

In evaluating whether or not a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department has considered, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was at an arms–length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246 (CIT 2005) ("TTPC"), citing Am. Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000). However, the analysis is not limited to these factors alone. The Department examines a number of factors, all of which may speak to the commercial realities surrounding the sale of subject merchandise. Although some *bona fides* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case–by-case basis, and the analysis may vary with the facts surrounding each sale. *See TTPC*, 366 F. Supp. 2d at 1260, *citing Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review*

and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum. The weight given to each factor investigated will depend on the circumstances surrounding the sale. *See TTPC*, 366 F. Supp. 2d at 1263.

As discussed in detail in the Department's Rescission Memo, the Department has determined that the new shipper sale made by Xinan PRC was not *bona fide* because of: 1) inconsistencies between the prices charged and the quantities sold by Xinan USA for the single POR sale and all subsequent sales made by Xinan USA during the POR from the PRC; 2) the circumstances surrounding payment for the expenses associated with the single POR sale; and 3) inconsistencies regarding the sales process followed by Xinan USA for the POR sale. Since the Department is rescinding this new shipper review, we are not calculating a company–specific rate for Xinan, and Xinan will remain part of the PRC–wide entity.

Notification

The Department will notify U.S. Customs and Border Protection that bonding is no longer permitted to fulfill security requirements for shipments by Xinan PRC of honey from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 183.80 percent *ad valorem* should be collected for any entries exported by Xinan PRC.

This notice also serves as the only reminder to parties subject to administrative protective orders ("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 the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: October 3, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5570 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Processed Products Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 12, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steven J. Koplin, F/ST1, Room 12456, 1315 East West Highway, Silver Spring, MD 20910–3282, 301–713–2328 or *steve.koplin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA, on an annual basis, collects information from seafood and industrial fishing processing plants on the volume and value of their fishery products and their monthly employment figures. Monthly, NOAA collects information on the production of fish meal and oil. NOAA uses the information gathered in the economic and social analyses used when proposing and evaluating fishery management actions.

II. Method of Collection

In the current survey, NOAA Fisheries provides each processor a preprinted form that includes the products produced by the company in the previous year. The processor only needs to fill in the quantities and any new products, before returning the form every year. Processors have the option to use a web-based application that allows them to submit the data electronically.

III. Data

OMB Number: 0648–0018.

Form Number: NOAA Forms 88–13, 88–13C.

Type of Review: Regular submission.

Affected Public: Business or other for-profits organizations.

Estimated Number of Respondents: 1,320.

Estimated Time Per Response: 30 minutes for an Annual Processed Products Report; and 15 minutes for a Fishery Products Report Fish Meal and Oil, monthly.

Estimated Total Annual Burden Hours: 680.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 5, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–20338 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Draft Environmental Assessment for Analysis of Remediation Alternatives for the Pacific Crossing—1 North and East Submarine Fiber Optic Cables in the Olympic Coast National Marine Sanctuary

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

ACTION: Notice.

SUMMARY: The draft environmental assessment (EA) evaluates the effects of submarine fiber optic cables owned by Pacific Crossing, Ltd. in the Olympic Coast National Marine Sanctuary (OCNMS). The EA evaluates eight alternative actions NOAA may take to address impacts associated with the current disposition of the cables. NOAA is soliciting comments and recommendations from the public regarding remediation alternatives and their impacts. The U.S. Army Corps of Engineers (ACOE) is a cooperating agency in this EA.

DATES: Comments must be received on or before October 24, 2005.

ADDRESSES: Submit written comments on the draft environmental assessment to Carol Bernthal, OCNMS Superintendent (PC–1 Cables Remediation Review), 115 E. Railroad Ave. Suite 301, Port Angeles, Washington 98362 or via e-mail to *carol.bernthal@noaa.gov*. Copies of the draft environmental assessment document can be downloaded from the NMSP Web site at *http://sanctuaries.noaa.gov/library/library.html*.

SUPPLEMENTARY INFORMATION: In November 1999, NOAA issued an authorization/special use permit to Pacific Crossing, Ltd. for installation by its contractor, Tyco Submarine Systems, Ltd., of two fiber optic cables through OCNMS. NOAA is considering amending the permit or issuing a new permit to address the condition of the cables. NOAA's goal is to fully achieve the objectives of the terms and conditions of the permit, which would prevent chronic damage to resources, substantially reduce risks to resources and fishers, and restore access to Native Americans to their treaty-reserved fishing grounds. NOAA is evaluating various remedial options to determine which option or combination of options would be most suitable to achieve this goal. The options range from no action to complete removal and reburial of the cables. ACOE, pursuant to Section 10 of the Rivers and Harbors Act of 1899, has permitting authority for obstructions to navigation, and pursuant to Section 404 of the Clean Water Act has permitting authority for the discharge of dredge or fill material in waters of the United States. As a cooperating agency, ACOE is considering modifying the existing Section 10/404 permit it issued for the Pacific Crossing cables to allow the proposed remediation in OCNMS to be performed.

Dated: October 5, 2005.

Charles W. Challstrom,

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

[FR Doc. 05–20363 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100505A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Habitat Committee (HC) will hold a working meeting which is open to the public.

DATES: The HC meeting will be held Tuesday, October 25, 2005, from 10 a.m. until approximately 5 p.m.

ADDRESSES: The HC meeting will be held at the National Marine Fisheries Service, St. Helens-A Conference Room, 1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232; telephone: (503) 231–6880.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Gilden, Associate Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: Attendees should check in on the 11th floor upon arrival. The purpose of the HC meeting is to review habitat-related issues on the agenda of the November 2005 Council meeting in San Diego, CA. Agenda items include issues associated with the Klamath River, and essential fish habitat issues associated with energy development.

No management actions will be decided by the HC. Although non-emergency issues not contained in the meeting agendas may come before the HC for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 5, 2005.

Emily Menashes,

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

[FR Doc. E5–5566 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: I.D. 030530140–5253–02]

Amendment to Final Guidelines for the Coastal and Estuarine Land Conservation Program

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; amendment to final guidelines.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service publishes this notice to amend the Final Guidelines for the Coastal and Estuarine Land Conservation Program (CELCP). For those grants issued in fiscal year 2002 only, CELCP may extend the financial assistance award period of grants issued in fiscal year 2002 for two additional years, totaling a maximum award duration of five years.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Elisabeth Morgan, 301–713–3155 X166, *elisabeth.morgan@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Coastal and Estuarine Land Conservation Program was established pursuant to Public Law 107–77 "for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses." The Final Guidelines for CELCP was published in the **Federal Register** on June 17, 2003 (68 FR 35860). The Final Guidelines stated that the standard financial assistance award period is 18 months, and could be

extended an additional 18 months if circumstances warrant, but may not exceed 3 years. CELCP has noted that several land acquisition projects funded in 2002 will not be completed by the end of fiscal year 2005. These awards were issued during the first year of the Program, prior to the issuance of the Final Guidelines in which the three-year limit was stipulated. For this reason, CELCP is amending the Final Guidelines for the Coastal and Estuarine Land Conservation Program to allow the financial assistance award period for awards issued in fiscal year 2002 to be extended for an additional two years. The maximum award duration for these grants is five years and will end on September 30, 2007.

Classification

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism).

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

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

Dated: September 30, 2005.

Richard W. Spinrad,

Assistant Administrator, National Ocean Service.

[FR Doc. 05–20327 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

October 4, 2005.

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

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov). Also see **Federal Register** notice 70 FR 8783, published on February 23, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 2005.

Commissioner,

Commissioner, Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 17, 2005, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Ukraine and exported during the twelve-month period which began on January 1, 2005 and extends through December 31, 2005.

Effective on October 11, 2005, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Ukraine:

Category	Adjusted twelve-month limit [1]
435	120,212 dozen.
442	19,125 dozen.
444	18,107 numbers.
448	82,878 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2004.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–5568 Filed 10–7–05; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of combed cotton yarn (Category 301).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee reapply a limit on imports from China of combed cotton yarn (Category 301). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of combed cotton yarn. The current limit on combed cotton yarn expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of combed cotton yarn are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order11651, as amended.

Background:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of combed cotton yarn (Category 301). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for combed cotton yarn and, if so, the role of Chinese-origin combed cotton yarn in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether combed cotton yarn imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin combed cotton yarn to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of combed cotton yarn, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin combed cotton yarn that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of combed cotton yarn in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of combed cotton yarn, and whether actual or anticipated imports of Chinese-origin combed cotton yarn are likely to affect the development and production efforts of the U.S. combed cotton yarn industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of combed cotton yarn as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin combed cotton yarn are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20402 Filed 10–6–05; 1:33 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton knit shirts and blouses (Category 338/339).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee reapply a limit on imports from China of cotton knit shirts and blouses (Category 338/339). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of cotton knit shirts and blouses. The current limit on cotton knit shirts and blouses expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of cotton knit shirts and blouses are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order11651, as amended.

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of cotton knit shirts and blouses (Category 338/339). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at http://otexa.ita.doc.gov/Safeguard05.htm.

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for cotton knit shirts and blouses and, if so, the role of Chinese-origin cotton knit shirts and blouses in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether cotton knit shirt and blouse imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin cotton knit shirts and blouses to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of cotton knit shirts and blouses, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin cotton knit shirts and blouses that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of cotton knit shirts and blouses in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of cotton knit shirts and blouses, and whether actual or anticipated imports of Chinese-origin cotton knit shirts and blouses are likely to affect the development and production efforts of the U.S. cotton knit shirt and blouse industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of cotton knit shirts and blouses as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton knit shirts and blouses are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20403 Filed 10–6–05; 1:36 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee reapply a limit on imports from China of men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of such shirts. The current limit on men's and boys' cotton and man-made fiber shirts, not knit expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such shirts are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for men's and boys' cotton and man-made fiber shirts, not knit and, if so, the role of Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether men's and boys' cotton and man-made fiber shirts, not knit imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of men's and boys' cotton and man-made fiber shirts, not knit, or to an imminent and substantial increase

in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of men's and boys' cotton and man-made fiber shirts, not knit in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of men's and boys' cotton and man-made fiber shirts, not knit, and whether actual or anticipated imports of Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit are likely to affect the development and production efforts of the U.S. men's and boys' cotton and man-made fiber shirts, not knit industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of men's and boys' cotton and man-made fiber shirts, not knit as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin men's and boys' cotton and man-made fiber shirts, not knit are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20404 Filed 10–6–05; 1:36 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton trousers (Category 347/348).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee reapply a limit on imports from China of cotton trousers (Category 347/348). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of such trousers. The current limit on cotton trousers expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such trousers are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months

preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of cotton trousers (Category 347/348). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for cotton trousers and, if so, the role of Chinese-origin cotton trousers in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether cotton trouser imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin cotton trousers to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of cotton trousers, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin cotton trousers that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of cotton trousers in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of cotton trousers, and whether actual or anticipated imports of Chinese-origin cotton trousers are likely to affect the development and production efforts of the U.S. cotton trouser industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of cotton trousers as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be ublished a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton trousers are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20405 Filed 10–6–05; 1:36 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton and man-made fiber brassieres (Category 349/649).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee reapply a limit on imports from China of cotton and man-made fiber brassieres (Category 349/649). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of such brassieres. The current limit on cotton and man-made fiber brassieres expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from

China of cotton and man-made fiber brassieres are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of cotton and man-made fiber brassieres (Category 349/649). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm.**

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for cotton and man-made fiber brassieres and, if so, the role of Chinese-origin cotton and man-made fiber brassieres in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether cotton and man-made fiber brassieres imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin cotton and man-made fiber brassieres to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of cotton and man-made fiber brassieres, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin cotton and man-made fiber brassieres that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of cotton and man-made fiber brassieres in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of cotton and man-made fiber brassieres, and whether actual or anticipated imports of Chinese-origin cotton and man-made fiber brassieres are likely to affect the development and production efforts of the U.S. cotton and man-made fiber brassieres industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of cotton and man-made fiber brassieres as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of

Chineseorigin cotton and man-made fiber brassieres are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20406 Filed 10–6–05; 1:37 pm]

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton and man-made fiber underwear (Category 352/652).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee reapply a limit on imports from China of cotton and man-made fiber underwear (Category 352/652). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of cotton and man-made fiber underwear. The current limit on cotton and man-made fiber underwear expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of cotton and man-made fiber underwear are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order11651, as amended.

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of cotton and man-made fiber underwear (Category 352/652). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm.**

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for cotton and man-made fiber underwear and, if so, the role of Chinese-origin cotton and man-made fiber underwear in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether cotton and man-made fiber underwear imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin cotton and man-made fiber underwear to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of cotton and man-made fiber underwear, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin cotton and man-made fiber underwear that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of cotton and man-made fiber underwear in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of cotton and man-made fiber underwear, and whether actual or anticipated imports of Chinese-origin cotton and man-made fiber underwear are likely to affect the development and production efforts of the U.S. cotton and man-made fiber underwear industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of cotton and man-made fiber underwear as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chineseorigin cotton and man-made fiber underwear are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20407 Filed 10–6–05; 1:37 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of other synthetic filament fabric (Category 620).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee reapply a limit on imports from China of other synthetic filament fabric (Category 620). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of other synthetic filament fabric. The current limit on other synthetic filament fabric expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of other synthetic filament fabric are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of other synthetic filament fabric (Category 620). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for other synthetic filament fabric and, if so, the role of Chinese-origin other synthetic filament fabric in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether other synthetic filament fabric imports from China are entering, or are expected to enter, the United States at

prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin other synthetic filament fabric to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of other synthetic filament fabric, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin other synthetic filament fabric that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of other synthetic filament fabric in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of other synthetic filament fabric, and whether actual or anticipated imports of Chinese-origin other synthetic filament fabric are likely to affect the development and production efforts of the U.S. other synthetic filament fabric; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of other synthetic filament fabric as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin other synthetic filament fabric are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20408 Filed 10–6–05; 1:37 pm].

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of man-made fiber knit shirts and blouses (Category 638/639).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee reapply a limit on imports from China of man-made fiber knit shirts and blouses (Category 638/639). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of man-made fiber knit shirts and blouses. The current limit on man-made fiber knit shirts and blouses expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of man-made fiber knit shirts and blouses are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel

products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of man-made fiber knit shirts and blouses (Category 638/639). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for man-made fiber knit shirts and blouses and, if so, the role of Chinese-origin man-made fiber knit shirts and blouses in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether man-made fiber knit shirt and blouse imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin man-made fiber knit shirts and blouses to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of man-made fiber knit shirts and blouses, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin man-made fiber knit shirts and blouses that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of man-made fiber knit shirts and blouses in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of man-made fiber knit shirts and blouses, and whether actual or anticipated imports of Chinese-origin man-made fiber knit shirts and blouses are likely to affect the development and production efforts of the U.S. man-made fiber knit shirt and blouse industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of man-made fiber knit shirts and blouses as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin man-made fiber knit shirts and blouses are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20409 Filed 10–6–05; 1:38 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of man-made fiber trousers (Category 647/648).

SUMMARY: On September 14, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE requesting that the Committee reapply a limit on imports from China of man-made fiber trousers (Category 647/648). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be reapplied on imports of man-made fiber trousers. The current limit on man-made fiber trousers expires on December 31, 2005. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of man-made fiber trousers are, due to the threat of market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 14, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be reapplied on imports from China of man-made fiber trousers (Category 647/648). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether there is a threat of disruption to the U.S. market for man-made fiber trousers and, if so, the role of Chinese-origin man-made fiber trousers in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on December 31, 2005: (1) Whether man-made fiber trouser imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product, or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin man-made fiber trousers to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of man-made fiber trousers, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin man-made fiber trousers that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country market); (4) The level and the extent of any recent change in inventories of man-made fiber trousers in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of man-made fiber trousers, and whether actual or anticipated imports of Chinese-origin man-made fiber trousers are likely to affect the development and production efforts of the U.S. man-made fiber trouser industry; and (6) Whether U.S. managers, retailers, purchasers, importers or other market participants have recognized Chinese producers of man-made fiber trousers as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no threat of market disruption or that the subject imports are not threatening to cause market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted

by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin man-made fiber trousers are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding the disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20410 Filed 10–6–05; 1:38 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cheesecloth, batistes, lawns/voiles (Category 226).

SUMMARY: On September 21, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cheesecloth, batistes, lawns/voiles (Category 226). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such fabric. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such fabric are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

BACKGROUND

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 21, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of cheesecloth, batistes, lawns/voiles (Category 226). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such fabric are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given tocomments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cheesecloth, batistes, lawns/voiles are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20411 Filed 10–6–05; 1:38 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of men's and boys' wool suits (Category 443).

SUMMARY: On September 21, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of men's and boys' wool suits (Category 443). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such suits. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such suits are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 21, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of men's and boys' wool suits (Category 443). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such suits are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given tocomments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of

Chineseorigin men's and boys' wool suits are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20412 Filed 10–6–05; 1:39 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of polyester filament fabric, light weight (Category 619).

SUMMARY: On September 21, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of polyester filament fabric, light weight (Category 619). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such fabric. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such fabric are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 21, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of polyester filament fabric, light weight (Category 619). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such fabric are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given tocomments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin polyester filament fabric, light weight are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the

Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20413 Filed 10–6–05; 1:39 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 5, 2005.

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

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of other men's and boys' man-made fiber coats and women's and girls' man-made fiber coats (Category 634/635).

SUMMARY: On September 21, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of other men's and boys' man-made fiber coats and women's and girls' man-made fiber coats (Category 634/635). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement) be applied on imports of such coats. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such coats are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by November 10, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

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

Background:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products", it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On September 21, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be applied on imports from China of other men's and boys' man-made fiber coats and women's and girls' man-made fiber coats (Category 634/635). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at **http://otexa.ita.doc.gov/Safeguard05.htm**.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such coats are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than November 10, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given tocomments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin other men's and boys' man-made fiber coats and women's and girls' man-made fiber coats are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's Procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20414 Filed 10–6–05; 1:39 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Office of the Assistant Secretary of Defense for Health Affairs; Meeting of the Board of Regents of the Uniformed Services University of the Health Sciences

ACTION: Quarterly meeting notice.

SUMMARY: The actions that will take place are the approval of the minutes from the Board of Regents meetings on July 18, 2005; departmental reports; and degrees from the USU School of Medicine. The President, USU; Dean, USU School of Medicine; and Dean, USU Graduate School of Nursing will also present reports. These actions are necessary in order to remain an accredited medical school and to pursue our mission, which is to provide trained medical personnel to our uniformed services.

DATES: November 7, 2005, 8 a.m. to 3 p.m.

ADDRESSES: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

FOR FURTHER INFORMATION CONTACT: LTC Mark Gifford, USA, Executive Secretary, Board of Regents, (301) 295–3427.

Dated: October 4, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–20390 Filed 10–6–05; 11:37 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A

Dates: Applications Available: October 11, 2005.

Deadline for Transmittal of Applications: See the chart listed under section IV. Application and Submission Information, 3. *Submission Dates and Times* (chart).

Eligible Applicants: Institutions of higher education (IHE). As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

Estimated Available Funds: The Administration has requested $4,399,500 for new awards in this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $29,330.

Estimated Number of Fellowship Awards: 150.

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

Project Period: The institutional project period is 18 months beginning July 1, 2006. Students may request funding for 6–12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program provides opportunities to graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 662.21(d)).

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

This priority is:

A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries. As part of its FY 2006 budget request, the Administration proposed to continue to allow funds to be used to support the applications of individuals who plan to utilize their language skills in world areas vital to the United States national security in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in such fields are eligible to apply for this program, in addition to those planning teaching careers. However, authority to use funds in this manner depends on final Congressional action.

Estimated Available Funds: The Administration has requested $4,399,500 for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000—$60,000.

Estimated Average Size of Fellowship Awards: $29,330.

Estimated Number of Fellowship Awards: 150.

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

Project Period: The institutional project period is 18 months beginning July 1, 2006. Students may request funding for 6–12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants may obtain an application package via the Internet by downloading the package from the program Web site: *http://www.ed.gov/programs/iegpsddrap/index.html.*

IHEs and student applicants may also obtain a copy of the application package by contacting Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW, Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or by e-mail: *ddra@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call

the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms to be submitted, are in the application package for this program.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the narrative to the equivalent of 10 pages and the bibliography to the equivalent of two (2) pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Student applicants may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if—

- A student applicant applies these standards and exceeds the page limits; or
- A student applicant applies other standards and exceeds the equivalent of the page limits.

3. *Submission Dates and Times:*

Applications Available: October 11, 2005.

Deadline for Transmittal of Applications: In light of the damage caused by Hurricanes Katrina and Rita we are establishing two separate deadlines for the submission of applications for grants under this competition to permit potential applicants affected by Hurricanes Katrina and/or Rita additional time to submit their applications. We are establishing a *General Deadline* for all applicants, and an *Extended Deadline* for potential applicants who have been affected by Hurricanes Katrina and/or Rita and are located in Louisiana, Texas, Alabama, Mississippi, and Florida. Specifically, the *Extended Deadline* applies only to: (1) institutions of higher education, SEAs, LEAs, non-profit organizations and other public or private organization applicants that are located in a federally-declared disaster area as determined by the Federal Emergency Management Agency (FEMA) (see *http://www.fema.gov/news/disasters.fema*) and that were adversely affected by Hurricanes Katrina and/or Rita, and (2) individual applicants who reside or resided, on the disaster declaration date, in a federally-declared disaster area as determined by FEMA (see *http://www.fema.gov/news/disasters.fema*) and were adversely affected by Hurricanes Katrina and/or Rita. These applicants must provide a certification in their application that they meet the criteria for submitting an application on the *Extended Deadline*, and be prepared to provide appropriate supporting documentation, if requested. If the applicant is submitting the application electronically, submission of the application serves as the applicant's attestation that they meet the criteria for submitting an application on the *Extended Deadline*.

The following chart provides the applicable deadlines for the submission of applications. If this program is subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in the chart.

	Transmittal of applications	Intergovernmental review
General Deadline	11/10/05	N/A
Extended Deadline	12/1/05	N/A

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit an IHE's application electronically or by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

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

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement and submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Doctoral Dissertation Research Abroad Program—CFDA Number 84.022A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing the electronic application, both the IHE and the student applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may e-mail an

electronic copy of a grant application to us. Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *ddra@ed.gov:* name of university, full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than September 30, 2005, in order to facilitate timely submission of their applications; (2) Students must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using e-Application. Student transcripts, however, must be mailed or hand delivered to the Department on or before the application deadline date using the applicable mail or hand delivery instructions for paper applications in this notice.

• The IHE must complete the electronic submission of the grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• Student applicants will not receive additional point value because he/she submits his/her application in electronic format, nor will we penalize the IHE or student applicant if it qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents, except for student transcripts, electronically, including the Application for Federal Education Assistance (ED 424), and all necessary assurances and certifications. Both IHEs and student applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a student applicant uploads a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Student transcripts must be mailed or hand delivered to the Department on or before the application deadline date in accordance with the applicable mail or hand delivery instructions for paper applications described in this notice.

• Both the IHE's and the student applicant's electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his/her application to his/her IHE, the student will receive an automatic acknowledgment. In addition, the applicant IHE's Project Director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he/she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If an IHE is prevented from electronically submitting the application on the application deadline date because the e-Application system is unavailable, we will grant the IHE an extension of one business day in order to transmit the application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: An IHE may qualify for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through the e-Application system because—

• The IHE or a student applicant does not have access to the Internet; or

• The IHE or a student applicant does not have the capacity to upload large documents to the Department's e-Application system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date

falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevent the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Carla White, U.S. Department of Education, 1990 K Street, NW, Suite 6000, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 400 Maryland Avenue, SW., Washington, DC 20202–4260

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.022A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address the IHE uses, the IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department:

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which the IHE is submitting its application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to the IHE. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The following selection criteria for this competition are from 34 CFR 662.21: The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points); (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points); (3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points); (4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries (10 points); and (6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field (10 points).

Qualifications of the applicant (40 points): In determining the qualifications of the applicant, the Secretary considers (1) The overall strength of the applicant's graduate academic record; (10 points) (2) The extent to which the applicant's academic record demonstrates a strength in area studies relevant to the proposed project; (10 points) (3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers; (15 points) and (4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both. (5 points)

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN). We may also notify the IHE informally.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved

application as part of its binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the electronic reporting system Evaluation of Exchange, Language, International and Area Studies (EELIAS) to complete the final report.

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 is a straightforward statute that requires all federal agencies to manage their activities with attention to the consequences of those activities. Each agency clearly states what it intends to accomplish, identifies the resources required, and regularly reports its progress to the Congress. In doing so, GPRA is improving accountability for the expenditures of public funds, improving Congressional decision-making with more thorough and objective information on the effectiveness of federal programs, and promoting a new government focus on results, cost-effectiveness, service delivery, and customer satisfaction.

The objective of the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program is to maintain a U.S. higher education system able to produce experts in less commonly taught languages and area studies who are capable of contributing to the needs of the U.S. government, academic and business institutions.

The following performance measure has been developed to evaluate the overall effectiveness of the DDRA program—The improvement of language proficiency of fellows. All grantees will be expected to provide documentation of the improved language proficiency of the fellows through the EELIAS system.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or via the Internet: *ddra@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: October 5, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–20365 Filed 10–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Faculty Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.019A

Dates: Applications Available: October 11, 2005.

Deadline for Transmittal of Applications: See the chart listed under section IV. Application and Submission Information, 3. *Submission Dates and Times* (chart).

Eligible Applicants: Institutions of higher education (IHEs). As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

Estimated Available Funds: The Administration has requested $1,395,000 for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $20,000–$100,000.

Estimated Average Size of Fellowship Awards: $60,000.

Estimated Number of Fellowship Awards: 25.

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

Project Period: The institutional project period is 18 months beginning June 1, 2006. Faculty may request funding for 3–12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program offers opportunities to faculty of IHEs to engage in research abroad in modern foreign languages and area studies.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 663.21(d)).

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

This priority is:

A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 663.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants, redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $1,395,000 for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $20,000–$100,000.

Estimated Average Size of Fellowship Awards: $60,000.

Estimated Number of Fellowship Awards: 25.

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

Project Period: The institutional project period is 18 months beginning June 1, 2006. Faculty may request funding for 3–12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Either an IHE or a faculty applicant may obtain an application package via Internet by downloading the package from the program Web site at: *http://www.ed.gov/programs/iegpsfra/applicant.html*

An IHE or a faculty applicant may also obtain a copy of the application package by contacting Amy Wilson, U.S. Department of Education, 1990 K Street, NW, room 6094, Washington, DC 20006–8521. Telephone: (202) 502–7689 or by e-mail: *amy.wilson@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

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

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the application narrative to the equivalent of no more than 10 pages and the accompanying bibliography to the equivalent of no more than two (2) pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, faculty applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are included as part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. However, faculty applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a faculty applicant's application if—

- A faculty applicant applies these standards and exceed the page limits; or
- A faculty applicant applies other standards and exceed the equivalent of the page limits.

3. *Submission Dates and Times:* Applications Available: October 11, 2005.

Deadline for Transmittal of Applications: In light of the damage caused by Hurricanes Katrina and Rita we are establishing two separate deadlines for the submission of applications for grants under this competition to permit potential applicants affected by Hurricanes Katrina and/or Rita additional time to submit their applications. We are establishing a *General Deadline* for all applicants, and an *Extended Deadline* for potential applicants who have been affected by Hurricanes Katrina and/or Rita and are located in Louisiana, Texas, Alabama, Mississippi, and Florida. Specifically, the *Extended Deadline* applies only to: (1) Institutions of higher education, SEAs, LEAs, non-profit organizations and other public or private organization applicants that are located in a federally-declared disaster area as determined by the Federal Emergency Management Agency (FEMA) (see *http://www.fema.gov/news/disasters.fema*) and that were adversely affected by Hurricanes Katrina and/or Rita, and (2) individual applicants who reside or resided, on the disaster declaration date, in a federally-declared disaster area as determined by FEMA (see *http://www.fema.gov/news/disasters.fema*) and were adversely affected by Hurricanes Katrina and/or Rita. These applicants must provide a certification in their application that they meet the criteria for submitting an application on the *Extended Deadline*, and be prepared to provide appropriate supporting documentation, if requested. If the applicant is submitting the application electronically, submission of the application serves as the applicant's attestation that they meet the criteria for submitting an application on the *Extended Deadline*.

The following chart provides the applicable deadlines for the submission of applications. If this program is subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in the chart.

	Transmittal of applications	Intergovernmental review
General Deadline	11/10/05	N/A
Extended Deadline	12/1/05	N/A

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit the IHE's application electronically or by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

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

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the Fulbright-Hays Faculty Research Abroad Fellowship Program—CFDA Number 84.019A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*

We will reject an application if it is submitted in paper format unless, as described elsewhere in this section, an IHE qualifies for one of the exceptions to the electronic submission requirement and submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor faculty applicant may e-mail an electronic copy of the grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays Faculty Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *amy.wilson@ed.gov:* name of university, full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than September 30, 2005, in order to facilitate timely submission of their applications; (2) Faculty must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual faculty must complete and submit reference forms for the faculty and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual faculty applications, reference forms, and other required forms, using e-Application. Unless an IHE applicant qualifies for an exception to the electronic submission requirement in accordance with the procedures in this section, all portions of the application must be submitted electronically.

• The IHE must complete the electronic submission of the grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and faculty applicant not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• Faculty applicants will not receive additional point value because he/she submits his/her application in electronic format, nor will we penalize an IHE if it qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and the IHE or faculty applicants submits their applications in paper format.

• IHEs must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), and all necessary assurances and certifications. Both IHEs and faculty applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or faculty applicant uploads a file type other than the three file types specified above, or submit a password protected file, we will not review that material.

• Both the IHE's and faculty applicant's electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual faculty applicant electronically submits his/her application to his/her IHE, the faculty member will receive an automatic acknowledgment. In addition, the application IHE's Project Director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he/she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual faculty applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If an IHE is prevented from electronically submitting the application on the application deadline date because the e-Application system is unavailable, we will grant the IHE an extension of one business day in order to transmit the application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our

acknowledgment of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: An IHE may qualify for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through the e-Application system because—

- The IHE or a faculty applicant does not have access to the Internet; or
- The IHE or a faculty applicant does not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevent the IHE from using the Internet to submit its application. If an IHE mails its written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Amy Wilson, U.S. Department of Education, 1990 K Street, NW, room 6094, Washington, DC 20006–8526. FAX: (202) 502–7859.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center Stop 4260, Attention: (CFDA Number 84.019A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address the IHE uses, the IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If the IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 550 12th Street, SW, Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department:

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which the IHE is submitting its application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to the IHE. If the IHE does not receive the grant application receipt acknowledgment within 15 days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The following selection criteria for this competition are from 34 CFR 663.21. The maximum score for all of the criteria is 100 points. The maximum score for each criteria is indicated in parenthesis. (a) *Quality of proposed project* (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points); (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's importance in terms of the concerns of the discipline (10 points); (3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points); (4) The justification for overseas field research, and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (10 points); and (6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign language and area studies (10 points).

(b) *Qualifications of the applicant* (40 points): In determining the qualifications of the applicant, the Secretary considers (1) The overall strength of the applicant's academic record (teaching, research, contributions, professional association activities) (10 points); (2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (10 points); (3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and (4) The applicant's ability to conduct

research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a faculty application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN). We may also notify the IHE informally.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates the IHE's approved application as part of its binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all the grantee institution's fellows, and financial information, as directed by the Secretary. The IHE and faculty fellows are required to use the electronic reporting system, the Evaluation of Exchange, Language, International and Area Studies (EELIAS) to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measure will be used by the Department in assessing the performance of the Fulbright-Hays Faculty Research Abroad Program:

The average language competency score of Fulbright-Hays Training Grants—Faculty Research Abroad fellows at the end of the research period (post-test) minus the average competency score at the beginning of the research period (pre-test). All grantees will be expected to provide documentation of the improved language proficiency of the fellows through the EELIAS system.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Amy Wilson, U.S. Department of Education, 1990 K Street, NW, room 6094, Washington, DC 20006–8526. Telephone: (202) 502–7689 or e-mail: *amy.wilson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: October 5, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–20366 Filed 10–7–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Group Projects Abroad Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A

Dates: Applications Available: October 11, 2005.

Deadline for Transmittal of Applications: See the chart listed under section IV. Application and Submission Information, 3. *Submission Dates and Times* (chart). Deadline for Intergovernmental Review: See chart.

Eligible Applicants: (1) Institutions of higher education, (2) State departments of education, (3) private nonprofit educational organizations, and (4) consortia of these entities.

Estimated Available Funds: The Administration has requested $2,505,408 for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$90,000.

Estimated Average Size of Awards: $69,595.

Maximum Award: We will reject any application that proposes a budget exceeding $90,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 36.

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

Project Period: Up to 12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Group Projects Abroad (GPA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, or group research or study.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 664.32)

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

This priority is:

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Within this absolute priority, we are establishing the following competitive preference and invitational priorities.

Competitive Preference Priority: For FY 2006 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), 664.30(b), and 664.31(g) we award up to an additional five (5) points to an application, depending on how well the application meets this priority.

This priority is:

Short-term seminars that develop and improve foreign language and area

studies at elementary and secondary schools.

Invitational Priority: For FY 2006 this priority is an invitational priority. Under 34 CFR 75.105 (c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Group Study projects that provide opportunities for nationally recruited undergraduate students to study in a foreign country for either a semester or a full academic year.

Program Authority: 22 U.S.C. 2452.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 664.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants. As part of its FY 2006 budget request, the Administration proposed to continue to allow funds to be used to support the participation of individuals who plan to apply their language skills and knowledge of countries vital to the United States national security in fields outside teaching, including government, the professions, or international development. Therefore, institutions may propose projects for visits and study in foreign countries by individuals in these fields, in addition to those planning a teaching career. However, authority to use funds for participants outside of the field of teaching depends on final Congressional action. Applicants will be given an opportunity to amend their applications if such authority is not provided.

Estimated Available Funds: The Administration has requested $2,505,408 for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$90,000.

Estimated Average Size of Awards: $69,595.

Maximum Award: We will reject any application that proposes a budget exceeding $90,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 36.

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

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of higher education, (2) State departments of education, (3) private nonprofit educational organizations, and (4) consortia of these entities.

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

IV. Application and Submission Information

1. *Address to Request Application Package:* Dr. Lungching Chiao or Ms. Michelle Guilfoil, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7624 or (202) 502–7625 or by e-mail: *lungching.chiao@ed.gov* or *michelle.guilfoil@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission*: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

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

3. *Submission Dates and Times*:

Applications Available: October 11, 2005.

Deadline for Transmittal of Applications: In light of the damage caused by Hurricanes Katrina and Rita we are establishing two separate deadlines for the submission of applications for grants under this competition to permit potential applicants affected by Hurricanes Katrina and/or Rita additional time to submit their applications. We are establishing a *General Deadline* for all applicants, and an *Extended Deadline* for potential applicants who have been affected by Hurricanes Katrina and/or Rita and are located in Louisiana, Texas, Alabama, Mississippi, and Florida. Specifically, the *Extended Deadline* applies only to: (1) institutions of higher education, SEAs, LEAs, non-profit organizations and other public or private organization applicants that are located in a federally-declared disaster area as determined by the Federal Emergency Management Agency (FEMA) (see *http://www.fema.gov/news/disasters.fema*) and that were adversely affected by Hurricanes Katrina and/or Rita, and (2) individual applicants who reside or resided, on the disaster declaration date, in a federally-declared disaster area as determined by FEMA (see *http://www.fema.gov/news/disasters.fema*) and were adversely affected by Hurricanes Katrina and/or Rita. These applicants must provide a certification in their application that they meet the criteria for submitting an application on the *Extended Deadline*, and be prepared to provide appropriate supporting documentation, if requested. If the applicant is submitting the application electronically, submission of the application serves as the applicant's attestation that they meet the criteria for submitting an application on the *Extended Deadline*.

The following chart provides the applicable deadlines for the submission of applications. If this program is

subject to Executive Order 12372, the relevant deadline for intergovernmental review is also indicated in the chart.

	Transmittal of applications	Intergovernmental review
General deadline	11/10/05	1/9/06
Extended deadline	12/1/05	2/1/06

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

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

Deadline for Intergovernmental Review: December 13, 2005.

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

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

6. *Other Submission Requirements*: Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Group Projects Abroad—CFDA Number 84.021A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this

notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dr. Lungching Chiao or Mrs. Michelle Guilfoil, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8521. FAX: (202) 502–7859.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: 84.021A, 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: 84.021A, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: 84.021A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.
The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 664.31 and are as follows: (a) Plan of operation (20 points), (b) quality of key personnel (10 points), (c) budget and cost effectiveness (10 points), (d) evaluation plan (20 points), (e) adequacy of resources (5 points), (f) impact (15 points), (g) relevance to institutional development (5 points), (h) need for overseas experiences (10 points), and (i) the extent to which the proposed project addresses the competitive preference priority (5 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. Grantees are required to use the electronic data instrument *Evaluation of Exchange, Language, International, and Area Studies* (EELIAS) system to complete the final report.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Dr. Lungching Chiao or Ms. Michelle Guilfoil, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8521. Telephone: (202) 502–7624 or (202) 502–7625 or by e-mail: *lungching.chiao@ed.gov* or *michelle.guilfoil@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call

the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*

Dated: October 5, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–20367 Filed 10–7–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–27–000]

Electric Energy, Inc.; Notice of Filing

October 4, 2005.

Take notice that on September 1, 2005, Electric Energy, Inc. (EEI) pursuant to the Commission's letter order issued February 8, 2005, submitted a report on its recent and current efforts with respect to regional transmission organizations.

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 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 October 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5550 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–153–000]

Indiana Municipal Power Agency; Notice of Filing

October 4, 2005.

Take notice that on September 28, 2005, Indiana Municipal Power Agency (IMPA) tendered for filing an initial Rate Schedule No. 4 and supporting cost data to establish its annual revenue requirements for providing Reactive Supply and Voltage Control from Generation Sources. IMPA requests an effective date for the proposed Rate Schedule FERC No. 3 as of November 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on October 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5554 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–102–000]

Noble Thumb Windpark I, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

October 4, 2005.

Take notice that on September 28, 2005, Noble Thumb Windpark I, LLC (Noble) submitted for filing an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5551 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–103–000]

Palomar Energy, LLC; Notice of Filing

October 4, 2005.

Take notice that on September 30, 2005, Palomar Energy, LLC (Palomar), 101 Ash Street, San Diego, California 92101 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Palomar states that its facility consists of two gas-fired combustion turbine generators and a steam turbine generator with a total nominal power output of approximately 550 MW, currently under construction in Escondido, California.

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 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 October 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5552 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–135–000779540]

TransCanada PipeLines Limited; Alberta Ltd.; TransCanada PipeLine USA Ltd.; TransCanada OSP Holdings Ltd.; TCPL Power Ltd.; Ocean State Power; Ocean State Power II; Notice of Filing

October 4, 2005.

Take notice that on September 30, 2005, TransCanada PipeLines Limited, 779540 Alberta Ltd, TransCanada PipeLine USA Ltd., TransCanada OSP Holdings Ltd, and TCPL Power Ltd., (collectively, Applicants) filed an amendment to its application filed on September 7, 2005, pursuant to section 203 of the Federal Power Act. Applicants state that this amendment adds two additional applicants to the application—Ocean State Power and Ocean State Power II.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 14, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5558 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–147–000]

Milford Power Company, LLC; Notice of Amended Complaint

October 4, 2005.

Take notice that on September 29, 2005, Milford Power Company, LLC

(Milford) filed an amended complaint requesting a Commission Order directing ISO New England to grant Milford's Requested Billing Adjustments. Milford states this amended complaint amends the Complaint filed on August 31, 2005.

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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to 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 email 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 December 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5553 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000 and EL00–98–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents. Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice Granting Motion to Defer Filing of Comments

October 3, 2005.

1. On August 25, 2005, pursuant to the Order on Cost Recovery, Revising Procedural Schedule for Refunds, and Establishing Technical Conference,[1] Federal Energy Regulatory Commission (Commission) staff convened a technical conference to finalize the format of the uniform template for cost filings. Filing dates for responsive pleadings were established at the technical conference, with initial comments on cost filings being due on October 11, 2005, and reply comments being due October 17, 2005.[2] On September 22, 2005, California Parties [3] filed a motion asking the Commission to allow them to defer filing their comments on the cost filing submitted by Enron Power Marketing, Inc., Enron Energy Services, Inc., and Enron North America Corp. (collectively, Enron). California Parties state that on August 24, 2005, they, along with Enron and other parties, filed a Joint Offer of Settlement with the Commission (Enron Settlement). California Parties state that approval of the Enron Settlement would obviate California Parties' need to address Enron's cost filing. California Parties note, however, that the Commission has not acted on the Enron Settlement, and may not rule on it prior to October 11, 2005, the date on which comments on cost filings are due. California Parties request permission to defer their filing of comments on Enron's cost filing until 21 days after any unfavorable ruling on the Enron Settlement, so as to conserve their time and financial resources.[4] California Parties further assert that, if the Commission were to grant the motion, it would also be appropriate to grant Enron a delayed six day reply comment period, consistent with the six day reply period in the current comment schedule.[5] In addition, given the impending October 11, 2005 deadline for filing comments on cost filings, California Parties request expedited treatment of their motion.

2. On September 28, 2005, Enron filed an answer supporting California Parties' motion. In addition, Enron requested an extension of time to file reply comments until nine days after the expiration of California Parties' proposed revised comment period, if the Enron Settlement were rejected and California Parties were to file comments on Enron's cost filing.[6]

3. We grant California Parties' motion, and we extend to all signatories to the Enron Settlement permission to defer filing comments and reply comments on Enron's cost filing until specified dates after the Commission rules on the Enron Settlement. California Parties and Enron aim to avoid devoting resources to a task that may prove unnecessary for them, and for all settling parties, if the Commission approves the Enron Settlement. Accordingly, we will allow California Parties and other Enron Settlement signatories to defer filing comments on Enron's cost filing until 21 days after the issuance of any determination on the Enron Settlement. Similarly, we will allow Enron to defer filing a reply to any deferred comments until six days after the expiration date of the revised comment period. While Enron requested nine days to reply to California Parties' comments because "[t]he cost recovery filing is complex, and, if history is any guide, the California Parties' comments will be detailed and voluminous," it would be inequitable to grant the additional three days.[7] Under the current schedule, all other parties who made cost filings have six days to reply to California Parties' comments on their cost filings, and Enron offers no justification why California Parties' comments would be more extensive on Enron's cost filing than any other cost filing.

4. Finally, we clarify that this deferral extends only to California Parties, Enron and all other signatories to the Enron Settlement. All remaining parties who intend to file comments on Enron's cost filing must do so according to the

[1] *San Diego Gas & Electric Co.* v. *Sellers of Energy and Ancillary Services*, 112 FERC ¶ 61,176 at Ordering Paragraph (E) (2005) (August 8 Order).

[2] *See* Cost Recovery Template, Docket Nos. EL00–95–000 and EL00–98–000 (August 26, 2005).

[3] The California Parties are the People of the State of California, ex rel. Bill Lockyer, Attorney General; the California Electricity Oversight Board; the California Public Utilities Commission; Pacific Gas & Electric Company; and Southern California Edison Company.

[4] California Parties' Motion at 4–5.

[5] Id. at 5 n.8.

[6] Enron's Answer at 2.

[7] Id. at 2.

October 11, 2005 deadline, or forgo their opportunity to do so. Similarly, Enron must file any response to those comments by October 17, 2005. The Commission is committed to completing the refund proceeding as expeditiously as possible, which includes completing its review of all cost filings, including Enron's, according to the timetable set forth in the August 8 Order.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5549 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 3, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–931–005; ER05–1178–002; ER01–930–005; ER05–1191–002.

Applicants: Entegra Power Group LLC.

Description: Entegra Power Group LLCfiled a response to FERC's 8/30/05 deficiency letter.

Filed Date: 09/28/2005.

Accession Number: 20050930–0001.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–1225–003.

Applicants: New York Industrial Energy Buyers, LLC.

Description: New York Industrial Energy Buyers, LLC submits an amendment to its 8/3/05 application for market-based rates.

Filed Date: 09/28/2005.

Accession Number: 20050930–0008.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–1226–002.

Applicants: New York Commercial Energy Buyers, LLC.

Description: New York Industrial Energy Buyers, LLC submits an amendment change to its 8/3/05 application for market-based rates.

Filed Date: 09/28/2005.

Accession Number: 20050930–0009.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–1328–001.

Applicants: Central Maine Power Company.

Description: Central Maine Power Co submits a revision to an unexecuted Local Network Agreements with Newark Group Gardiner Paperboard.

Filed Date: 09/28/2005.

Accession Number: 20050930–0010.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–1510–000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Co on behalf of Connecticut Light and Power Co et al submits a notice of termination to the Power Supply Agreement with Princeton Municipal Electric Department.

Filed Date: 09/27/2005.

Accession Number: 20050928–0216.

Comment Date: 5 p.m. eastern time on Tuesday, October 18, 2005.

Docket Numbers: ER05–1511–000.

Applicants: Noble Thumb Windpark I, LLC.

Description: Noble Thumb Windpark I LLC submits its application for Order Accepting Initial Rate Schedule, Waiving Regulations, and Granting Blanket Approvals and Request for Expedited Considerations.

Filed Date: 09/28/2005.

Accession Number: 20050930–0005.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–1512–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement with Wellington Development-WDVT, LLC and West Penn Power Co. dba Allegheny Power.

Filed Date: 09/28/2005.

Accession Number: 20050930–0014.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–1514–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc on behalf of Southern Companies submits an informational filing to update FERC Annual Charge component.

Filed Date: 09/28/2005.

Accession Number: 20050930–0012.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–1515–000.

Applicants: Texas Retail Energy, LLC.

Description: Application of Texas Retail Energy LLC for order accepting market-based rate tariff for filing granting waivers and blanket approvals.

Filed Date: 09/28/2005.

Accession Number: 20050930–0003.

Comment Date: 5 p.m. eastern time on Wednesday, October 19, 2005.

Docket Numbers: ER05–651–003.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a revised version of the Large Generator Interconnection Agreement with FPL Energy Cowboy Wind, LLC et al pursuant to Commission Order issued 8/25/05.

Filed Date: 09/27/2005.

Accession Number: 20050929–0088.

Comment Date: 5 p.m. eastern time on Tuesday, October 18, 2005.

Docket Numbers: ER95–1441–022.

Applicants: ConocoPhillips Company.

Description: ConocoPhillips Co submits amended triennial market power analysis and revision to FERC Electric Tariff No. 1.

Filed Date: 09/22/2005.

Accession Number: 20050930–0208.

Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

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 and 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. E5–5547 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9184–013]

Flambeau Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 3, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–9184–013.

c. *Date Filed:* June 10, 2005.

d. *Applicant:* Flambeau Hydro, LLC.

e. *Name of Project:* Danbury Hydroelectric Project.

f. *Location:* On the Yellow River in Burnett County, Wisconsin. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Scott Klabunde, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960; 920–293–4628 ext. 14.

i. *FERC Contact:* Tim Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 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.

The Commissions Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Danbury Project consists of: (1) A 35-foot-high concrete dam with a 48-foot-wide spillway with three sections, each of which is equipped with 7-foot-high slide gates; (2) a 300-foot-long earthen dike connecting to the right side of the concrete dam; (3) a powerhouse (Plant 1) integral to the dam containing a 176-kW turbine generating unit and a 300-kW turbine generating unit; (4) a 255-acre reservoir with a negligible net storage capacity at a water surface elevation of 929.21 feet NGVD from April through October and 928.11 feet NGVD from November through March; (5) a 2,500-foot-long power canal that conveys water to; (6) a second powerhouse (Plant 2) containing a single 600-kW turbine generating unit; and (7) appurtenant facilities. The applicant estimates that the total average annual generation is 3,844 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in the EA. Staff intends to give at least 30 days for entities to comment on the EA before final action is taken on the license application.

Issue Scoping Document for Comments—September 2005.

Notice application ready for environmental analysis—November 2005.

Notice of the availability of the EA—March 2006.

Ready for Commission's decision on the Application—May 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5548 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and To Change Name of Project and Soliciting Comments, Motions To Intervene, and Protests

October 4, 2005.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License and Change of Project Name.

b. *Project No.:* 539–006.

c. *Date Filed:* September 27, 2005.

d. *Applicants:* Kentucky Utilities Company (Transferor); Lock 7 Hydro Partners, LLC (Transferee).

e. *Name and Location of Project:* The Lock No. 7 Hydroelectric Project is located at the U.S. Army Corps of Engineers' Kentucky River Lock and Dam No. 7 in Mercer County, Kentucky.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicants Contacts:* For the transferor: John Wolfram, Kentucky Utilities Company, c/o LG&E Services, 220 West Main Street, Louisville, KY 40202, (502) 627–4110. For the transferee: David Brown Kinloch, Shaker Landing Hydro Associates, Inc., 414 South Wenzel Street, Louisville, KY 40204, (502) 589–0975 and Larry Hicks, Salt River Electric, 111 West Brashear Avenue, Bardstown, KY 40004, (502) 348–3931.

h. *FERC Contact:* James Hunter at (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* November 7, 2005.

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 on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document 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 documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Lock No. 7 Hydroelectric Project from the Transferor to the Transferee. The Transferee also requests that the name of the project be changed to the Mother Ann Lee Hydroelectric Station.

k. 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 (P–539) 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 addresses 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. 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.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "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 eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. 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 Applicants. 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 Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5555 Filed 10–7–05; 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

October 4, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Capacity Amendment of License.

b. *Project No.:* 7396–045.

c. *Date Filed:* September 9, 2005.

d. *Applicant:* The Incorporated County of Los Alamos.

e. *Name of Project:* Abiquiu Hydroelectric Project.

f. *Location:* The project is located on the Chama River, Rio Arriba County, New Mexico.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Thomas L. Biggs, Department of Public Utilities, Los Alamos County, 901 Trinity Drive, P.O. Drawer 1030, Los Alamos, NM 87544, (505) 662–8130.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov*.

j. *Deadline for filing comments and or motions:* November 7, 2005.

k. *Description of Request:* The licensee filed an amendment application to install a new low flow turbine generator unit, which would be located within an addition of the existing powerhouse. The project currently generates electricity using two generating units that are able to utilize flows between 200–650 cfs each. The proposed low flow unit will allow the project to operate during low flow winter months when the existing generating units do not operate. New construction would be limited to a small expansion of the existing powerhouse and tailrace.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://*

www.ferc.gov/docs-filing/esubscription.asp to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5556 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

October 4, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 9985–029.

c. *Date Filed:* September 19, 2005.

d. *Applicants:* Rivers Electric Company, Inc. of New Jersey (transferor); Rivers Electric Company, Inc. of New York (transferee).

e. *Name and Location of Project:* The Mill Pond Project is located on the Catskill Creek in Greene County, New York.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Robert E. King, Rivers Electric Company, Inc. of New Jersey, P.O. Box 194, Sullivan, NH 03445, (603) 847–9798.

For the transferee: Robert E. King, Rivers Electric Company, Inc. of New Jersey, P.O. Box 194, Sullivan, NH 03445, (603) 847–9798.

h. *FERC Contact:* Robert Bell at (202) 502–6062

i. *Deadline for filing comments, protests, and motions to intervene:* November 7, 2005.

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 on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document 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 documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Mill Pond Project from the Rivers Electric Company, Inc. of New Jersey to Rivers Electric Company, Inc. of New York.

k. 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 (P–9985) 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 addresses 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. 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, 385.211, 385.214. 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.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "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 eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. 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 Applicants. 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 Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5557 Filed 10–7–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. PBSC Financial Corporation, Greenville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Pinnacle Bank of South Carolina, Greenville, South Carolina (in organization).

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Porter Bancorp, Inc., Shepherdsville, Kentucky; to acquire additional shares, for a total of 100 percent of the voting shares of BBA, Inc., Shepherdsville, Kentucky, and thereby indirectly acquire Bullitt County Bank, Shepherdsville, Kentucky.

Board of Governors of the Federal Reserve System, October 5, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5546 Filed 10–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 051 0051]

DaVita, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 1, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "DaVita, Inc., File No. 051 0051," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Richard H. Cunningham, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2214.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 4, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/10/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–2222.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from DaVita Inc. ("DaVita"). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from DaVita's purchase of Gambro Healthcare Inc. ("Gambro") from Gambro AB. Under the terms of the Consent Agreement, DaVita is required to divest 69 dialysis clinics and terminate 2 management services contracts in 35 markets across the United States.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement or make it final.

Pursuant to an Agreement dated December 6, 2004, DaVita proposes to acquire Gambro from Gambro AB for approximately $3.1 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the market for the provision of outpatient dialysis services in 35 markets.

II. The Parties

Headquartered in El Segundo, California, DaVita is the second largest provider of outpatient dialysis services in the United States. DaVita operates 665 outpatient dialysis clinics in 37 states and the District of Columbia at which approximately 55,000 end stage renal disease ("ESRD") patients receive treatment. In 2003, DaVita's revenues were approximately $2.1 billion.

Gambro AB is a publicly-traded Swedish corporation with worldwide operations focused in three business fields: operating dialysis centers, manufacturing dialysis equipment, and providing technology and products to blood centers and hospital blood banks. Gambro is Gambro AB's entire U.S. dialysis services business. Gambro, headquartered in Denver, Colorado, is the third largest provider of outpatient dialysis services in the United States, with 565 outpatient dialysis clinics serving approximately 43,200 ESRD patients in 33 states and the District of Columbia. In 2003, Gambro's revenues were approximately $1.8 billion.

III. Outpatient Dialysis Servi

Outpatient dialysis services is the appropriate relevant product market in which to assess the effects of the proposed transaction. For patients suffering from ESRD, dialysis treatments are a life-sustaining therapy that replaces the function of the kidneys by removing toxins and excess fluid from the blood. Most ESRD patients receive dialysis treatments three times per week in sessions lasting between three and five hours. Kidney transplantation is the only alternative to dialysis for ESRD patients. However, the wait-time for donor kidneys—during which ESRD patients must receive dialysis treatments—can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, many ESRD patients have no alternative to ongoing dialysis treatments.

The relevant geographic markets for the provision of dialysis services are local in nature. They are limited by the distance ESRD patients are willing and/or able to travel to receive dialysis treatments. Most ESRD patients are quite ill and suffer from multiple health problems. As such, it is difficult for ESRD patients to travel long distances for dialysis treatment. Generally, ESRD patients are unwilling and/or unable to travel further than 30 miles or 30 minutes to receive dialysis treatments, depending on traffic patterns, local geography, and the patient's proximity to the nearest center. As a result, competition among dialysis clinics occurs at a local level, corresponding to metropolitan areas or subsets thereof.

Entry into the outpatient dialysis services markets addressed by the Consent Agreement on a level sufficient to deter or counteract the likely anticompetitive effects of the proposed transaction is not likely to occur in a timely manner. The primary barrier to entry is the difficulty associated with locating nephrologists with established patient pools to serve as medical directors. By law, each dialysis clinic must have a nephrologist medical director. As a practical matter, medical directors are essential to the success of a clinic because they are the primary source of referrals. The lack of available nephrologists with an established referral stream is a significant barrier to entry into each of the relevant markets. Beyond that, entry is also inhibited where certain attributes (such as a rapidly growing ESRD population, a favorable regulatory environment, average or below nursing and labor costs, and a low penetration of managed care) are not present, as is the case in many of the geographic markets identified in the Commission's complaint.

Each of the geographic markets addressed by the Consent Agreement is highly concentrated. The proposed acquisition represents a merger to monopoly in 11 markets and would cause the number of providers to drop from 3 to 2 in 13 other markets. Additionally, concentration increases significantly in the remaining 11 markets addressed by the Consent Agreement. In each of these markets, the post-acquisition HHI exceeds 4,000, and the change in HHI is at least 800. The high post-acquisition concentration levels, along with evidence of DaVita and Gambro's head-to-head competition in these markets, indicates that the combined firm would be able to exercise unilateral market power. The evidence shows that health insurance companies and other private payors who pay for dialysis services used by their members benefit from direct competition between DaVita and Gambro when negotiating the rates to be charged by the dialysis provider. As a result, the proposed combination likely would result in higher prices and diminished service and quality for outpatient dialysis services in many geographic markets.

IV. The Consent Agreement

The Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in 35 markets where both DaVita and Gambro operate dialysis clinics by requiring DaVita to divest—prior to acquiring Gambro—68 outpatient dialysis clinics to Renal Advantage and one outpatient dialysis clinic to its medical directors and their partners. The Consent Agreement also requires DaVita to terminate two management services agreements pursuant to which it manages outpatient dialysis clinics on behalf of third-party owners. As with the divestitures, termination of these management services agreements will ensure that these clinics remain viable independent competitors.

As part of these divestitures, DaVita is required to obtain the agreement of the medical directors affiliated with the divested clinics to continue providing

physician services after the transfer of ownership to Renal Advantage. Similarly, the Consent Agreement requires DaVita to obtain the consent of all lessors necessary to assign the leases for the real property associated with the divested clinics to Renal Advantage. These provisions ensure that Renal Advantage will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to ensure that the divestitures are successful. First, the Consent Agreement provides Renal Advantage with the opportunity to interview and hire employees affiliated with the divested clinics and prevents DaVita from offering these employees incentives to decline Renal Advantage's offer of employment. This will ensure that Renal Advantage has access to patient care and supervisory staff who are familiar with the clinics' patients and the local physicians. Second, the Consent Agreement prevents DaVita from contracting with the medical directors (or their practice groups) affiliated with the divested clinics for three years. This provides Renal Advantage with sufficient time to build goodwill and a working relationship with its medical directors before DaVita can attempt to capitalize on its prior relationships in soliciting their services. Third, to ensure continuity of patient care and records as Renal Advantage implements its quality care, billing, and supply systems, the Consent Agreement allows DaVita to provide transition services for a period of 12 months. Firewalls and confidentiality agreements have been established to ensure that competitively sensitive information is not exchanged. Fourth, the Consent Agreement requires DaVita to provide Renal Advantage with a license to use DaVita's policies and procedures, as well as the option to obtain DaVita's medical protocols, which will further enhance Renal Advantage's ability to provide continuity of care to patients. Finally, the Consent Agreement requires DaVita to provide prior notice to the Commission of its planned acquisitions of dialysis clinics located in the 35 markets addressed by the Consent Agreement. This provision ensures that subsequent acquisitions do not adversely impact competition in the markets at issue and undermine the remedial goals of the proposed order.

The Commission is satisfied that Renal Advantage is a qualified acquirer of the divested assets. Renal Advantage is a newly-formed company whose management has extensive experience operating, acquiring, and developing outpatient dialysis clinics. The company has received a substantial equity investment from Welsh, Carson, Anderson, and Stowe, which is the largest healthcare-focused private equity firm in the United States.

The Commission has appointed Mitch Nielson and John Strack of FocalPoint Medical Consulting Group ("FocalPoint") as Monitors to oversee the transition service agreements, and the implementation of, and compliance with, the Consent Agreement. Messrs. Nielson and Strack are the principles of FocalPoint, which provides consulting services to the healthcare industry.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–20312 Filed 10–7–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–05CW]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Online Surveys to Measure Awareness of Chronic Fatigue Syndrome Public Awareness Campaign (OMB Control No. 0920–05CW)—New—National Center for Health Marketing (NCHM), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Chronic fatigue syndrome (CFS) is a serious illness that affects many Americans. With as many as 900,000 cases, many of which are misdiagnosed or left undiagnosed, the need for a CFS public education and awareness campaign is crucial.

With an estimated $9.1 billion lost annually in U.S. productivity due to CFS, the economic impact is a substantial reason for Americans to take notice. More importantly, the diminished quality of life for many patients suffering from CFS is especially hard to manage. The lack of quality information regarding CFS makes it all the more difficult for those affected by CFS to receive the support and treatment needed to manage this illness.

Research shows that 80 to 90 percent of patients have not been clinically diagnosed and are not receiving proper medical care. Lack of awareness and information among health care providers about CFS as a serious and treatable illness has created significant barriers to diagnosing and treating those who suffer from CFS.

Congress recognized the need to change this scenario, as reported in the Committee Reports for the Senate Appropriations Committee (Senate Report 108–345—To accompany S. 2810 Sept. 15, 2004) when the committee stated:

> Further, the Committee encourages CDC to better inform the public about this condition, its severity and magnitude and to use heightened awareness to create a registry of CFS patients to aid research in this field.

During the next two years, CDC, in partnership with the Chronic Fatigue and Immune Dysfunction Syndrome (CFIDS) Association of America, will build the case that chronic fatigue syndrome is real, serious and should be diagnosed quickly to ensure the best possible health outcomes.

To do so, a public education and awareness campaign will be launched to bring about changes in beliefs and social norms among target audiences (consumers: women aged 40–60, healthcare practitioners: nurse practitioners and physician assistants) that CFS is a diagnosable and treatable physical illness.

Although considerable research will be done to ensure that campaign themes, messages, and materials are effective, there is no way to test the impact of the campaign on the target audience other than to conduct baseline and follow-up surveys. These surveys will measure not only the level of awareness created by the campaign, but will measure change in key knowledge, attitudes and beliefs about CFS among the target audiences. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Instrument	Number of respondents	Number of responses per respondent	Response burden per respondent (in hours)	Total annual burden (in hours)
Consumers (Women, 40–60 years of age)	Pre-program survey	400	1	10/60	67
Consumers (Women, 40–60 years of age)	Post-program survey	400	1	10/60	67
Physician Assistants	Pre-program survey	200	1	10/60	33
Physician Assistants	Post-program survey	200	1	10/60	33
Nurse Practitioners	Pre-program survey	200	1	10/60	33
Nurse Practitioners	Post-program survey	200	1	10/60	33
Total					266

Dated: October 4, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–20323 Filed 10–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0526]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 7, 2005 (70 FR 33177), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0389. The approval expires on August 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20305 Filed 10–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0083]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, and Forms FDA 356h and 2567

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, and Forms FDA 356h and 2567" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 2005 (70 FR 42068), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0338. The approval expires on September 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20306 Filed 10–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0217]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 10, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cosmetic Product Voluntary Reporting Program—21 CFR Part 720 (OMB Control Number 0910–0030)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361), or misbranded under section 602 of the act (21 U.S.C. 362), cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products. Ingredient statements for new submissions (§§ 720.1 through 720.4) are reported on Form FDA 2512, "Cosmetic Product Ingredient Statement," and on Form FDA 2512a, a continuation form. Amendments to product formulations (§§ 720.3, 720.4, and 720.6) also are reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, "Discontinuance of Commercial Distribution of Cosmetic Product Formulation" (§§ 720.3 and 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA places cosmetic product filing information in a computer database and uses the information for evaluation of cosmetic products currently on the market. Because filing of cosmetic product formulations is not mandatory, voluntary filings provide FDA with the best information available about cosmetic product ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. The information assists FDA scientists in evaluating reports of alleged injuries and adverse reactions from the use of cosmetics. The information also is used in defining and planning analytical and toxicological studies pertaining to cosmetics.

Information from the database is releasable to the public under FDA compliance with the Freedom of Information Act. FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry.

FDA has developed an electronic submission system for filing Forms FDA 2512, FDA 2512a, and FDA 2514 that will reduce the reporting burden for respondents and FDA. The system is currently undergoing additional beta testing and implementation is anticipated for fall 2005.

In the **Federal Register** of June 13, 2005 (70 FR 34142), FDA published a 60-day notice requesting public comment on the proposed extension of an existing collection of information described by the regulations in part 720. FDA received two letters, one from a trade association and one from a cosmetic company, each containing one or more comments, in response to the proposed extension of existing collection of information for part 720.

The trade association commended the agency for making the Cosmetic Product Voluntary Reporting Program less burdensome on the cosmetic industry by modernizing the program to take advantage of technological advances. The cosmetic company stated, however, that the requirement for both the ingredient name and a 9-digit identification number on Form FDA 2512a is burdensome.

FDA appreciates the trade association's remarks as well its assistance in making the voluntary reporting system more efficient. As to the burdensomeness of the dual requirement expressed by the cosmetic company, FDA expects to have its new system for electronic submission of cosmetic ingredient information to the Cosmetic Product Voluntary Reporting Program, which is currently in the beta testing stage, implemented in fall 2005. FDA expects that the new system will greatly simplify the submission of cosmetic ingredient information to the program by, among other things, permitting either the identification number or ingredient name to be submitted (except for new ingredients).

The cosmetic company also requested that FDA accept submission of a single Form FDA 2512 for groups of hair color preparations for which only the amounts of color additive ingredients are varied. FDA is not granting this request as it will be unnecessary once the agency implements its new electronic submission system. The agency's new electronic submission system will facilitate new submissions by making frequently used ingredients accessible from a "favorites" list and by making ingredient formulations previously submitted on the paper forms accessible to users of the new system upon proof of ownership.

The cosmetic company also requested that FDA modify the continuation footer in the paper version of Form FDA 2512a. FDA does not believe the requested change is necessary because the agency expects that its new electronic submission system will greatly reduce the use of paper versions of Forms FDA 2512, FDA 2512a, and FDA 2514.

The cosmetic company suggested that FDA revise the product categories in § 720.4(c) to include new types of products. FDA is not making the suggested revision. The agency does not believe this revision is necessary because each category already provides a subcategory for "other preparations" that covers products that do not fit in the specified subcategories.

Finally, the cosmetic company recommended that FDA's new electronic submission system provide for direct transfer of information from company databases to FDA's. FDA is not permitting this recommended direct transfer of information for security reasons. The agency has to limit the

ways people can enter data into the electronic submission system to protect the database from corruption.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.1 through 720.4 (new submissions)	FDA 2512 and FDA 2512a	112	12.9	1,446	0.5	723
720.4 and 720.6 (amendments)	FDA 2512 and FDA 2512a	112	0.5	52	0.33	17
720.3 and 720.6 (notices of discontinuance)	FDA 2514	112	1	4	0.1	0.4
720.8 (requests for confidentiality)		1	1	1	1.5	1.5
Total						742

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with the Cosmetic Product Voluntary Reporting Program. The estimated annual total hours burden is 75 percent of the burden reported in 2002 due to decreased submissions. However, the number of respondents doubled, and FDA attributes this to increased interest in the program. FDA expects the number of submissions to increase accordingly in the next 3 years.

Dated: October 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20307 Filed 10–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0124]

Agency information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 16, 2005 (70 FR 35097), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0374. The approval expires on September 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20308 Filed 10–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0401]

Draft Guidance for Industry and FDA Staff: Compliance With the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices." The Medical Device User Fee and Modernization Act of 2002 (MDUFMA), as amended by the Medical Device User Fee Stabilization Act of 2005 (MDUFSA), requires that FDA issue guidance within 180 days of enactment (August 1, 2005) identifying the circumstances in which the name, abbreviation, or symbol identifying the manufacturer of an original device is not "prominent and conspicuous."

DATES: Submit written or electronic comments on this draft guidance so that they are received by close of business on November 10, 2005. FDA will not be able to consider comments received after that date in developing the final guidance. FDA may consider late comments at a future time if the

guidance needs to be revised at a later date.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0106.

SUPPLEMENTARY INFORMATION:

I. Background

MDUFMA (Public Law 107–250) amended section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) to require a device, or an attachment to the device, to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer. This labeling provision applied to all devices and all device manufacturers, including reprocessors.

On August 1, 2005, MDUFSA (Public Law 109–43) amended section 502(u) of the act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Therefore, section 502(u) of the act, as amended by MDUFSA, no longer sets forth requirements for original equipment manufacturers, unless they also reprocess SUDs. Under the amended provision, if an original device or an attachment to it does not prominently and conspicuously bear the name of the manufacturer of the original device, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying such manufacturer, the manufacturer who reprocesses the SUD may identify itself using a detachable label on the packaging of the device.

Section 2(c)(2) of MDUFSA requires that FDA issue guidance not later than 180 days after the date of its enactment to identify the circumstances under which the identifying mark of a manufacturer of an original device is not "prominent and conspicuous," as used in section 502(u) of the act. When finalized, this guidance document will satisfy this MDUFSA requirement. As stated previously, FDA requests that interested person submit their comments on the draft guidance within 30 days of its publication. FDA will consider these comments to determine whether to revise the guidance before issuing it in final form.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on "Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive " Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1217) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In the **Federal Register** of September 29, 2005 (70 FR 56910), FDA published a 60-day notice soliciting comments on the information collection provisions contained in this guidance.

V. Comments

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

Dated: October 3, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–20329 Filed 10–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection: Final Rule To Implement Title V of the Tribal Self-Governance Amendments of 2000; Request for Public Comment: 30-Day Notice

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 30-day Proposed Information Collection: Final Rule to Implement Title V of the Tribal Self-Governance Amendments of 2000.

SUMMARY: The Indian Health Service (IHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review and approval. The IHS received no comments in response to the 60-day **Federal Register** notice (70 FR 44663) published on August 3, 2005. The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0026, "Final Rule to Implement Title V of the Tribal Self-Governance Amendments of 2000". *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0026, "Final Rule to Implement Title V of the Tribal Self-Governance Amendments of 2000". *Form Number:* None. *Forms:* None. *Need and Use of Information Collection:* The "Tribal Self-Governance Amendments of 2000", Public Law 106–206 (the act), repeals Title III of the Indian Self-Determination Act, Public Law 93–638, as amended, (ISDA) and enacts Title V that established a permanent Self-Governance program within DHHS. Thus Indian and Alaska Native Tribes are now able to compact for the operation, control, and redesign of various IHS activities on a permanent basis. The final rule has been negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the DHHS. The final rule included provision governing how DHHS/IHS carries out its responsibility to Indian Tribes under the Act and how Indian Tribes carry out their responsibilities under the Act. As required by section 517(b) of the Act, the Department has developed this final rule with active Tribal participation of Indian Tribes, inter-Tribal consortia, Tribal organizations and individual Tribal members, using the guidance of the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq*. Health status reporting requirements will be negotiated on an individual Tribal basis and included in individual compacts of funding agreements. Response to the data collection continues to be voluntary; however, submission of the data is essential to participation in the Tribal Self-Governance process. Self-Governance Tribes have the option of participating in the Tribal Self-Governance process. Self-Governance Tribes have the option of participating in a voluntary national uniform data collection effort with the IHS. The department is seeking continued OMB approval of the collection of information identified in the following sections of the regulations: Subpart C-Selection of Tribes for Participation in Self-Governance, Subpart D and E-Compact and Funding Agreement, Subpart N-Construction Projects, and Subpart P-Appeals. *Affected Public:* Individual Tribes. *Type of Respondents:* Tribal Representatives.

The table below provides the estimated burden hours for this information collection:

TABLE.—ESTIMATED ANNUAL BURDEN HOURS

CFR section	Estimated number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
Subpart C—Eligibility criteria	50	1	10.0	500
Subpart D—Self-governance compact and Subpart E—Funding agreement	50	1	34.0	1,700
Subpart N—Construction	30	1	40	1,200
Subpart P—Appeals	8	1	40	320
Total Annual Burden				3,720

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely function; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, directly to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Allison Eydt, Desk Officer for IHS.

Send requests for more information on the proposed collection or to obtain a copy of the data collection instrument(s) and instructions to: Mrs. Christina Rouleau, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov*.

For Further Information directly pertaining to the proposed data collection instrument and/or the process, please contact Tena Larney, Reyes Building, 801 Thompson Avenue, Suite 200, Rockville, MD 20852–1627, Telephone (301) 443–7821.

Comment Due Date: You comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 4, 2005.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 05–20330 Filed 10–7–05; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Collection: Indian Health Service Loan Repayment Program; Request for Public Comment: 30-Day Notice

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 30-day Proposed Information Collection: Indian Health Service Loan Repayment Program.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection list below. This proposed information collection project was published in the August 3, 2005, **Federal Register** (70 FR 44662) and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

Proposed Collection: Title: 0917–0014, "Indian Health Service Loan Repayment Program". *Type of Information Collection Request:* Extention of a currently approved collection which expires December 31, 2005. *Form Number:* No reporting forms required. *Need and Use of Information Collection:* The IHS Loan Payment Program (LRP) identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and willing to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract under which the IHS agrees to repay part or all of their indebtedness for professional training education. In exchange, the health professionals agree to serve for a specified period of time in IHS health care facilities. Eligible health professionals that wish to apply must submit an application to participate in the program. The application requests personal, demographic and educational training information, including information on the educational loans of the individual for which repayment is being requested (i.e., date, amount, account number, purpose of each loan, interest rate, the current balance, etc). The data collected is needed and used to evaluate applicant eligibility; rank and prioritize applicants by specialty; assign applicants to IHS health care facilities; determine payment amounts and schedules for paying the lending institutions; and to provide data and statistics for program management review and analysis. *Affected Public:* Individual and households. *Type of Respondents:* Individuals. Table 1 below provides the following: Types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

TABLE 1.—ESTIMATED BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response*	Total annual burden hours
Section I	425	1	0.25 (15 min)	106.25
Section II	425	1	0.25 (30 min)	212.5
Section III	425	4	0.25 (15 min)	425
Contract	425	1	0.334 (20 min) ..	141.95
Affidavit	425	1	0.167 (10 min) ..	70.97
Lender's Certification	1,700	1	.025 (15 min	425

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s), contact: Mrs. Christina Rouleau, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852–1601, or call non-toll free (301) 443–5938 or send via facsimile to (301) 443–2316, or send your E-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before November 10, 2005.

Dated: September 4, 2005.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 05–20331 Filed 10–7–05; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2005–0068]

Notice of Meeting of the Advisory Committee to the National Center for State and Local Law Enforcement Training.

AGENCY: Federal Law Enforcement Training Center, DHS.

ACTION: Meeting.

SUMMARY: The Advisory Committee to the National Center for State and Local Law Enforcement Training will meet at the Embassy Suites, 500 Mall Boulevard, Brunswick, GA, on November 2, 2005, beginning at 8 a.m.

DATES: November 2, 2005.

ADDRESSES: If you desire to submit comments, they must be submitted within 10 days after publishing of Notice. Comments must be identified by DHS–2005–0068 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: *reba.fischer@dhs.gov*. Include docket number in the subject line of the message.
- Fax: (912) 267–3531. (Not a toll-free number).
- Mail: Reba Fischer, Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, 912–267–2343, *reba.fischer@dhs.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 1 *et seq.* The agenda for this meeting includes briefings from FLETC staff on National Center training, FY06 planning, and discussion on strategic goals and training needs of state, local, campus, and tribal law enforcement officers. This meeting is open to the public.

Stanley Moran,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 05–20345 Filed 10–7–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22541]

Merchant Mariner Credentials: Temporary Procedures

AGENCY: Coast Guard, DHS.

ACTION: Notice of establishment of temporary offices.

SUMMARY: On August 29, 2005, Hurricane Katrina devastated the coastlines of Louisiana, Mississippi, and Alabama. The Regional Examination Center (REC) at New Orleans, which serves 14% of mariners nation-wide including approximately 29,000 mariners in those three states, was flooded, destroying vital records and equipment, and rendering the facility temporarily inoperable. The Coast Guard is opening temporary offices in Morgan City, LA and Memphis, TN to provide services to mariners that have been affected by the closure of the REC in New Orleans.

DATES: This Notice is effective October 11, 2005.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Donald J. Kerlin, Deputy Director, Coast Guard National Maritime Center (NMC), (202) 493–1006.

SUPPLEMENTARY INFORMATION: Two temporary offices in Morgan City, LA and Memphis, TN have been established to assist the pre-existing RECs that have seen increases in activity due to Hurricane Katrina, and subsequently Hurricane Rita.

The temporary office in Morgan City, LA is now open, and will accept completed applications and offer fingerprinting services, identity verification, and administration of oaths for mariners. The Morgan City office is located at 800 David Dr., Morgan City, LA, 70380. It is open weekdays from 9:30 a.m. to 4 p.m. Applicants may reach the office by phone at (985) 380–5150 or by fax at (985) 380–5379.

A temporary full-service REC in Memphis, TN is also now open, and is staffed by employees from the New Orleans REC. This office, which is located adjacent to the pre-existing REC in Memphis, is dedicated to restoring services to mariners from the Gulf Coast who were affected by Katrina. The temporary Memphis office is located at 200 Jefferson, Ave., Suite 1301, Memphis, TN, 38103. It is open weekdays from 8 a.m. to 4 p.m. and closed from noon to 1 (noon to 2 on Wednesday). The office is closed the last Wednesday of each month. Applicants may reach the office by phone at (901) 544–3941 (select "1" for New Orleans REC), or by fax at (901) 544–3172.

The Morgan City and Memphis temporary offices will both be closed on Federal holidays.

When the recovery and restoration efforts along the Gulf Coast permit, the Coast Guard will re-establish full REC services in the New Orleans area.

In a previous notice published October 4, 2005 in the **Federal Register**, the Coast Guard waived the fee for mariners whose homes of record are in the states of Louisiana, Mississippi or Alabama, as confirmed by the Coast Guard's Merchant Mariner Licensing and Documentation System (MMLD), who are applying for duplicate credentials. Please see the notice published in the **Federal Register** in Volume 70 page 57885 for more details on the waiver program. You may also call Mr. Kerlin for assistance at the number provided in **FOR FURTHER INFORMATION CONTACT.**

Authority: 46 U.S.C. 2103, 2110, 7101, 7302, 7501, 7502, and Department of Homeland Security Delegation No. 0170.1.

Dated: October 5, 2005.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 05–20349 Filed 10–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for the Handy Brake National Wildlife Refuge and the Louisiana Wetland Management District

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to

the National Environmental Policy Act of 1969 and its implementing regulations.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan 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 management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: An open house style meeting will be held during the scoping phase and public draft phase of the comprehensive conservation plan development process. Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the dates and opportunities for input throughout the planning process. The planning process for the Louisiana Wetland Management District and Handy Brake National Wildlife Refuge will be conducted in conjunction with each other.

ADDRESSES: Comments and requests for more information regarding the Louisiana Wetland Management District planning process should be sent to Lindy Garner, Planning Biologist, North Louisiana National Wildlife Refuge Complex, 11372 Highway 143, Farmerville, Louisiana 71241; Telephone: (318) 726–4222 x5; Fax: (318) 726–4667; Electronic-mail: *northlarefuges@fws.gov*. To ensure consideration, written comments must be received no later than November 25, 2005.Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: The Louisiana Wetland Management District was established in September 1990 "* * * for conservation purposes * * *" 7 U.S.C. 2002 (Consolidated Farm and Rural Development Act). Most of the 37 Farm Service Agency easements, 10 fee title tracts, and 4 leases are concentrated in northeastern Louisiana. In 1988, the first fee title transfer of a Farm Service Agency tract in the Southeast Region resulted in the establishment of Handy Brake National Wildlife Refuge. The wetland management district currently oversees Fish and Wildlife Service interests on about 10,000 acres. This refuge is combined with D'Arbonne, Upper Ouachita, Black Bayou Lake, and Red River National Wildlife Refuges to form the North Louisiana National Wildlife Refuge Complex. The wetland management district encompasses several parishes in the northern half of Louisiana: Natchitoches, Grant, Richland, Morehouse, West Carroll, and East Carroll.

Habitat management within the wetland management district focuses primarily on reforestation of marginal agricultural areas and development and maintenance of moist-soil units. Mowing, discing, burning, and/or spraying is periodically required to maintain early successional stages.

The varied habitat on lands within the wetland management district provide for a diverse array of wildlife. Bald eagles and peregrine falcons are known to occur on the district. Both are usually associated with large waterfowl concentrations. Small concentrations (<1,000) of waterfowl are seen on the easement tracts and on Handy Brake Refuge, depending upon the availability of water. Migratory songbirds also use several of the tracts and Handy Brake Refuge. Resident furbearers include fox, gray squirrels, rabbits, deer, beaver, and raccoon.

There are limited wildlife observation opportunities at Handy Brake Refuge and other fee title tracts within the Louisiana Wetland Management District. The observation tower at Handy Brake Refuge had approximately 3,200 visitors during 2002.

A few potential issues to be reviewed during the planning process include water manipulation, beaver control throughout the district, and control of undesirable plant species, such as willow, cocklebur, and Sesbania. Control methods in the past included mechanical means, water level manipulation, and spraying.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for State and local governments, agencies, organizations, and the public to participate in issue scoping and public comment. Comments received by the planning team will be used as part of the planning process.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: September 7, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–20318 Filed 10–7–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The ANS Task Force will meet from 8:30 a.m. to 5:30 p.m. on Wednesday, October 19, 2005, and Thursday, October 20, 2005.

ADDRESSES: The ANS Task Force meeting will be held at the Hyatt Dulles, 2300 Dulles Corner Blvd., Herndon, VA, 20171; (703) 713–1234. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203, and will be made available for public inspection during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Scott Newsham, ANS Task Force Executive Secretary, at (703) 358–1796.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces meetings of the ANS Task Force. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: Federal member, Committee, and Regional Panel reports; revision of the Strategic Plan;

regional priorities; 100th Meridian Initiative activities; Caulerpa eradication activities in California; Caulerpa national management plan; development of a national database of taxonomic experts; invasive species forecasting; and risk analysis.

Dated: September 26, 2005.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 05–20313 Filed 10–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–PK; HAG 06–001]

Joint Meeting for the Southeast Oregon, John Day-Snake, and Eastern Washington Resource Advisory Councils (TRI RAC)

AGENCY: Bureau of Land Management (BLM), Lakeview District.

ACTION: Notice.

SUMMARY: The TRI RAC will hold a joint meeting for all members on Monday November 7, 2005 from 8 a.m. Pacific Standard Time (PT) to 5 p.m. Tuesday November 8, 2005. The meeting will begin at 7:30 a.m. and end about noon. The meeting is being held at the Running Y Ranch Resort, Conference Room, 5500 Running Y Road, Klamath Falls, Oregon 97601. Meeting sessions are open to the public. A comment period is scheduled for 10:15 a.m. (PT) on Monday November 7, 2005. The meeting topics to be discussed include: New member orientation and video, a BLM and Forest Service update by the State Director and Regional Forester, Congressional updates, and a panel discussion on RAC involvement. Grazing regulations, the wild horse and burro program, and planning and implementation updates will follow. There will be a panel discussion on volunteerism and outside funding, stewardship contracting, proactive strategies and a RAC restructuring proposal. There may also be other issues that may come before the Councils.

The Southeast Oregon Resource Advisory Council will hold a brief meeting Sunday November 6, 2005, at the Running Y Ranch Resort at 3 p.m. (PT) in the Board Room. The John Day-Snake Resource Advisory Council will hold a brief meeting on Tuesday November 8, 2005 following the close of the TRI RAC meeting. These additional meetings will be to discuss the same issues and concerns that are scheduled for the TRI RAC meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the TRI RAC meeting may be obtained from Pam Talbott, contact representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, Oregon 97630 (541) 947–6107, or *ptalbott@or.blm.gov.*

Dated: October 4, 2005.

Shirley Gammon,

Lakeview District Manager.

[FR Doc. 05–20321 Filed 10–7–05; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, November 7, 2005, from 8 a.m., to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet at the Hotel Washington, 515 Pennsylvania Avenue, Washington, DC, 20004. The Hotel Washington's phone numbers are (202) 638–5900 or (800) 424–9540. Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business, November 2, 2005. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, (775) 861-6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. DeLorme at any time by calling the Federal Information Relay Service at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, November 7, 2005 (8:00 a.m.–5:00 p.m.)

8 a.m. Call to Order & Introductions:
8:15 a.m. Old Business:
  Approval of August 2005 Minutes.
  Update Pending Litigation.
8:45 a.m. Program Updates:
  Gathers.
  Adoptions.
  Facilities.
  Forest Service Update.
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Program Updates (continued):
  Adoption Strategy.
  Program Accomplishments.
Lunch (11:45 a.m.–1:00 p.m.)
1 p.m. New Business:
Break (2:30 p.m.–2:45 p.m.)
2:45 p.m. Board Recommendations.
4 p.m. Public Comments.
4:45 p.m. Recap/Summary/Next Meeting/Date/Site.
5–6 p.m. Adjourn: Roundtable Discussion to Follow.

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on November 7, 2005, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon on November 7, 2005, at the meeting location. Depending on the

number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Ramona_DeLorme@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: October 5, 2005.

Thomas H. Dyer,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. 05–20340 Filed 10–7–05; 8:45 am]

BILLING CODE 4310–84–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the NRC on technical issues related to nuclear materials and waste management. The bases of ACNW reviews include 10 CFR parts 20, 60, 61, 63, 70, 71, and 72 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act as amended, the Low-Level Radioactive Waste Policy Act as amended, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW*. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend a meeting may contact the Designated Federal Official (DFO) specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons who plan to make oral statements and/or submit written comments at the meeting should provide 50 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be in the possession of the DFO prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO specified in the individual **Federal Register** Notice.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be present in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be

available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACNW meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/*. A copy of the certified minutes of the meeting will be available at the same location up to three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

(g) The meeting room is handicapped accessible.

ACNW Working Group Meetings

From time to time the ACNW may sponsor an in-depth meeting on a specific technical issue to understand staff expectations and review work in progress. Such meetings are called Working Group meetings. These Working Group meetings will also be conducted in accordance with these procedures noted above for the ACNW meeting, as appropriate. When Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: October 5, 2005.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–20317 Filed 10–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 6, 2005, to September 29, 2005. The last biweekly notice was published on September 27, 2005 (70 FR 56499).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: April 6, 2005, as supplemented by letter dated August 8, 2005.

Description of amendment request: The proposed amendment will modify Technical Specification (TS) 6.8.4.k, "Containment Leakage Rate Testing Program," and TS Surveillance Requirement (SR) 4.6.1.6.1, "Containment Vessel Surfaces." The proposed amendment would modify the TS to allow for a one-time extension of the containment Type A test interval from once in 10 years to once in 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to HNP [Harris Nuclear Plant] TS 6.8.4.k and TS SR 4.6.1.6.1 provide a one-time extension of the containment Type A test interval from 10 years to 15 years and specifies that additional visual inspections are done in accordance with Subsections IWE and IWL of the ASME [American Society of Mechanical Engineers] Section XI Code. The existing 10-year test interval is based on past test performance. The proposed TS change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment vessel is designed to provide a leak-tight barrier against the uncontrolled release of radioactivity to the environment in the unlikely event of postulated accidents. As such, the containment vessel is not considered as the initiator of an accident. Therefore, the proposed TS change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only a one-time change to the interval between containment Type A tests. Type B and C leakage testing will continue to be performed at the intervals specified in 10 CFR Part 50, Appendix J, Option A, as required by the HNP TS. As documented in NUREG–1493, "Performance-Based Containment Leakage-Test Program," industry experience has shown that Type B and C containment leak rate tests have identified a very large percentage of containment leak paths, and that the percentage of containment leak paths that are detected only by Type A testing is very small. In fact, an analysis of 144 integrated leak rate tests, including 23 failures, found that none of the failures involved a containment liner breach. NUREG–1493 also concluded, in part, that reducing the frequency of containment Type A testing to once per 20 years results in an imperceptible increase in risk. The HNP test history and risk-based evaluation of the proposed extension to the Type A test interval supports this conclusion. The design and construction requirements of the containment vessel, combined with the containment inspections performed in accordance with the American Society of Mechanical Engineers (ASME) Code, Section XI, and the Maintenance Rule (10 CFR 50.65) provide a high degree of assurance that the containment vessel will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed TS change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to HNP TS 6.8.4.k and TS SR 4.6.1.6.1 provide a one-time extension of the containment Type A test interval to 15 years and specifies that additional visual inspections are done in accordance with Subsections IWE and IWL of the ASME Section XI Code. The existing 10-year test interval is based on past test performance. The proposed change to the Type A test interval does not result in any physical changes to HNP. In addition, the proposed test interval extension does not change the operation of HNP such that a failure mode involving the possibility of a new or different kind of accident from any accident previously evaluated is created. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change to HNP TS 6.8.4.k and TS SR 4.6.1.6.1 provide a one-time extension of the containment Type A test interval from 10 years to 15 years and specifies that additional visual inspections are done in accordance with Subsections IWE and IWL of the ASME Section XI Code. The existing 10-year test interval is based on past test performance. The NUREG–1493 study of the effects of extending containment leak rate testing found that a 20 year extension for Type A testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leak rate contributes a very small amount to the individual risk and that the decrease in Type A testing frequency would have a minimal affect on this risk since most potential leak paths are detected by Type B and C testing. The proposed change involves only a one-time extension of the interval for containment Type A testing; the overall containment leak rate specified by the HNP TS is being maintained. Type B and C testing will continue to be performed at the frequency required by the HNP TS. The regular containment inspections being performed in accordance with the ASME Code, Section XI, and the Maintenance Rule (10 CFR 50.65) provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A testing. In addition, a plant-specific risk evaluation has demonstrated that the one-time extension of the Type A test interval from 10 years to 15 years results in a very small increase in risk for those accident sequences influenced by Type A testing.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall, Jr.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant (HNP), Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 20, 2005.

Description of amendment request: The amendment would revise Technical Specifications (TS) 3/4.4.7, "Reactor Coolant System Chemistry." Specifically, the proposed amendment would revise the footnotes in Tables 3.4–2 and 4.4–3 of the TS to increase the temperature limit from 180 °F to 250 °F above which reactor coolant sampling and analysis for dissolved oxygen is required and dissolved oxygen limits apply.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This amendment does not involve a significant hazards consideration for the following reasons:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of HNP in accordance with the proposed amendment does not increase the

probability or consequences of accidents previously evaluated. The Final Safety Analysis Report (FSAR) documents the analyses of design basis accidents (DBA) at HNP. Any scenario or previously analyzed accident that results in offsite dose were evaluated as part of this analysis. The proposed amendment does not change or affect any accident previously evaluated in the FSAR. The proposed amendment does not modify any plant equipment. In addition, the proposed amendment does not result in a change to a structure, system, or component (SSC), or adversely affect its design function.

The purpose of the temperature limit for RCS [Reactor Coolant System] oxygen control is to minimize corrosion at high temperatures on RCS components. Increasing the temperature at which oxygen levels are required to be maintained within specified limits from 180 °F to 250 °F is supported by industry and vendor data which indicates that the influence of dissolved oxygen at or below 250 °F is not significant with regard to stress corrosion cracking and general corrosion of RCS components. The proposed amendment is consistent with the Electric Power Research Institute's (EPRI's) guidelines for Pressurized Water Reactor (PWR) Primary Water Chemistry. This amendment places HNP in line with standard industry specifications for reactors of similar size and vintage. HNP's proposed amendment to increase the temperature limit for applicability to 250 °F would decrease the time needed to achieve compliance with the dissolved oxygen limit and decrease the overall time to restart the plant from cold shutdown. Removing oxygen in a more expeditious fashion enhances RCS chemistry. Based on the above, RCS integrity is maintained by this amendment.

Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of HNP in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The FSAR documents the analyses of design basis accidents (DBA) at HNP. Any scenario or previously analyzed accident that results in offsite dose were evaluated as part of this analysis. The proposed amendment does not change or affect any accident previously evaluated in the FSAR, and no new or different scenarios are created by the proposed amendment to the TS. The proposed amendment does not modify any plant equipment. In addition, the proposed amendment does not result in a change to an SSC [structure, system, or component] or adversely affect its design function.

The purpose of the temperature limit for RCS oxygen control is to minimize corrosion at high temperatures on RCS components. Increasing the temperature at which oxygen levels are required to be maintained within specified limits from 180 °F to 250 °F is supported by industry and vendor data which indicates that the influence of dissolved oxygen at or below 250 °F is not significant with regard to stress corrosion cracking and general corrosion of RCS components. The proposed amendment is consistent with EPRI's guidelines for PWR Primary Water Chemistry. This amendment places HNP in line with standard industry specifications for reactors of similar size and vintage. HNP's proposed amendment to increase the temperature limit for applicability to 250 °F would decrease the time needed to achieve compliance with the dissolved oxygen limit and decrease the overall time to restart the plant from cold shutdown. Removing oxygen in a more expeditious fashion enhances RCS chemistry. Based on the above, RCS integrity is maintained by this amendment.

Therefore, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of HNP in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. Existing TS operability and surveillance requirements are not reduced by the proposed amendment. The proposed amendment does not modify any plant equipment. In addition, the proposed amendment does not result in a change to a structure, system, or component (SSC), or its design function. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the FSAR.

The purpose of the temperature limit for RCS oxygen control is to minimize corrosion at high temperatures on RCS components. Increasing the temperature at which oxygen levels are required to be maintained within specified limits from 180 °F to 250 °F is supported by industry and vendor data which indicates that the influence of dissolved oxygen at or below 250 °F is not significant with regard to stress corrosion cracking and general corrosion of RCS components. The proposed amendment is consistent with EPRI's guidelines for PWR Primary Water Chemistry. This amendment places HNP in line with standard industry specifications for reactors of similar size and vintage. HNP's proposed amendment to increase the temperature limit for applicability to 250 °F would decrease the time needed to achieve compliance with the dissolved oxygen limit and decrease the overall time to restart the plant from cold shutdown. Removing oxygen in a more expeditious fashion enhances RCS chemistry. Based on the above, RCS integrity is maintained by this amendment.

Therefore, this amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall, Jr.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 20, 2005.

Description of amendment request: The proposed amendment would revise Cooper Nuclear Station (CNS) Technical Specification (TS) 5.3, "Unit Staff Qualifications," to upgrade the qualification standard for the Shift Manager, Senior Operator, Licensed Operator, and Shift Technical Engineer from Regulatory Guide (RG) 1.8, Revision 2 "Qualification and Training of Personnel for Nuclear Power Plants," to RG 1.8, Revision 3. It also clarifies qualification requirements applicable to the Operations Manager position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes are administrative in nature and do not require any physical modifications, affect any plant components, or result in any changes in plant operation. They provide clarity and consistency to the CNS licensing basis.

Upgrading the unit staff qualifications for the Shift Manager, Senior Operator, Licensed Operator, and Shift Technical Engineer from Regulatory Guide 1.8, Revision 2, to Regulatory Guide 1.8, Revision 3, is an administrative change that will clarify the current requirements for qualification and training of operations personnel. The changes are consistent with the application of a systems approach to training in an accredited training program. By promulgation of the 10 CFR Part 55 rule change, the NRC determined that an accredited licensed operator training program based on a systems approach to training provides an acceptable means of qualifying licensed operating personnel.

The addition of qualification requirements for the Operations Manager position clarifies SRO [Senior Reactor Operator] license requirements for Operations management personnel by specifying that the Operations Supervisor is the member of Operations management required to have a current SRO license at CNS. The Operations Manager is required to hold or have previously held a

SRO license. This will ensure an acceptable level of operations knowledge to perform in a managerial oversight role. This approach is consistent with current guidance in ANSI/ANS [American Nuclear Standards Institute/American Nuclear Society] 3.1–1993. This change is administrative in nature and has no impact on previously evaluated accidents.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

These changes are administrative in nature and do not involve a physical alteration of the plant or a change to plant operations. No new failure mechanisms, malfunctions, or accident initiators are introduced. The proposed changes provide clarity and consistency to the CNS licensing basis in regard to training and qualification of operations personnel and SRO license requirements for Operations management personnel.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Response: No.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

These changes are administrative in nature and do not affect any Technical Specification safety limit or limiting condition for operation. No safety margins are affected by these changes. The proposed changes do not involve a change in plant design or operation for the mitigation of postulated accidents. The proposed changes provide clarity and consistency to the CNS licensing basis in regard to training and qualification of operations personnel and SRO license requirements for Operations management personnel.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: David Terao.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 25, 2005.

Description of amendment request: The proposed amendment would revise the definitions of Channel Calibration, Channel Function Test, and Logic System Functional Test in accordance with the Technical Specification Task Force Traveler 205–A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The definitions of Channel Calibration, Channel Functional Test, and Logic System Functional Test specified in Technical Specifications (TS) provide basic information regarding what the test involves, the components involved in the test, and general information regarding how the test is to be performed. These definitions and their specific wording are not precursors to any accident. As a result these revised definitions result in no increase in the probability of an accident previously evaluated.

The proposed revisions of these definitions involve no changes to plant design, equipment, or operation related to mitigation of accidents. The proposed revisions of these definitions do not change their meaning or intent. The proposed revisions clarify the definitions and do not result in a reduction of required testing of instrumentation used to mitigate accidents.

Based on the above NPPD [Nebraska Public Power District] concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revisions of the definitions do not involve a change to the design or operation of any plant structure, system, or component (SSC). As a result the plant will continue to be operated in the same manner. The proposed revisions will not result in a change to how the instrumentation used to monitor plant operation and to mitigate accidents is tested. Operating the plant and testing the plant's instrumentation in the same manner as is currently done will not create the possibility of a new or different kind of accident.

Based on the above NPPD concludes that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The affected definitions involve testing of instrumentation used in the mitigation of accidents to ensure that the instrumentation will perform as assumed in safety analyses. The proposed revisions of these definitions will not change their meaning or intent. As a result, the instrumentation will continue to be tested in the same manner as is currently done. Revising these definitions as proposed will not result in a change to the design or operation of any plant SSC used to shutdown the plant, initiate the Emergency Core Cooling Systems, or isolate primary or secondary containment. As a result the ability of the plant to respond to and mitigate accidents is unchanged by the revised definitions.

Based on the above, NPPD concludes that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: David Terao.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 29, 2005.

Description of amendment requests: The proposed amendments would revise Technical Specification 3.7.5, "Auxiliary Feedwater (AFW) System," to change the frequency of Surveillance Requirement 3.7.5.6 from 92 days to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to increase [the] frequency interval for Surveillance Requirement (SR) 3.7.5.6 from 92 days to 24 months has no impact on the probability of accidents previously evaluated. The valves controlled by SR 3.7.5.6 are used to provide an alternate supply of water to the auxiliary feedwater (AFW) system from the fire water storage tank (FWST) and are only operated after an accident has occurred. They are not accident initiators.

Misoperation, or failure of a[n] FWST supply to be correctly positioned following an accident, could result in an inadequate supply of water to the AFW system. Failure to provide adequate core cooling could increase the radiological consequences of an accident. However, operating and maintenance histories of the FWST supply valves show that these valves have been

capable of full stroke cycling each time they have been tested. There is no evidence of any time-related degradation mechanism that would prevent the valves from performing their design function. Thus[,] the proposed change has no impact on the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different [kind of] accident from any accident previously evaluated?

Response: No.

The proposed change to increase frequency interval for SR 3.7.5.6 from 92 days to 24 months has no impact on the probability of accidents of the type evaluated in the Final Safety Analysis Report, as updated. The valves are used to provide an alternate supply of water to the AFW system from the FWST, and are only operated after an accident has occurred. They are not accident initiators. Review of the operating and maintenance histories of the FWST supply valves show that they are highly reliable in maintaining their capability to perform their design function.

Therefore, the proposed change does not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to SR 3.7.5.6 involves only an increase in the frequency interval. No physical changes are required to the facility or to the plant operating or emergency procedures as a result of the change. Based on review of the operating and maintenance histories of the FWST supply valves, they have been capable of full stroke cycling each time they have been tested. There is no evidence of any time-related degradation mechanism that would prevent the valves from performing their design function. This evidence supports the conclusion that there will be no impact in the operation of these valves following an accident.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Daniel S. Collins (Acting).

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: August 23, 2005.

Description of amendment requests: The proposed amendments would revise the expiration dates of the Units 1 and 2 facility-operating licenses to recapture low-power testing time, and to reflect a 40-year term measured from the date of issuance of each unit's full-power operating license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed additional operating license periods do not affect the probability or consequences of an accident previously evaluated since they require no physical change in the plant equipment or operating procedures and the Final Safety Analysis Report (FSAR) Update safety analyses are based on [a] 40-year full[-]power operation. Surveillance and maintenance practices, as well as other programs such as environmental qualification of equipment, ensure timely identification and correction of any degradation of safety-related plant equipment. The long-term integrity of the reactor vessels has been evaluated using currently acceptable NRC calculational methods and best available Diablo Canyon Power Plant (DCPP) specific data. The evaluation results demonstrate that both reactor vessels are safe for normal operations in excess of 40 years.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different [kind of] accident from any accident previously evaluated?

Response: No.

The possibility of a new or different kind of accident is not created by the proposed additional operating periods since at least 40 years of full[-]power operation was assumed in the design and construction of DCPP Units 1 and 2. The plant maintenance programs are also designed to both maintain and determine the need to replace safety-related components. These programs will continue to be applied as they are presently to assure safe operation.

Therefore, the proposed change does not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed additional operating periods do not involve a significant reduction in a margin of safety since, as is the case with present operation, degradation of safety-related equipment will be identified and corrected by ongoing surveillance and maintenance practices. Existing programs, routine maintenance, and compliance with Technical Specifications assure that an adequate margin of safety is maintained. These activities will remain in effect for the duration of the proposed additional operating periods.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Daniel S. Collins (Acting).

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: June 30, 2005.

Description of amendment request: The proposed changes would revise the Administrative Control section of the Technical Specifications (TSs) to permit the Westinghouse best estimate methodology for loss-of-coolant-accident (LOCA) analysis methodology to be utilized for analyses as required by Title 10 of the Code of Federal Regulations, Part 50, Section 46, "Acceptance criteria for emergency core cooling systems [ECCS] for light water nuclear power reactors' (10 CFR 50.46).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Implementation of the best-estimate large break LOCA methodology and associated TS changes is proposed to increase margin to the peak clad temperature limits defined in 10 CFR 50.46. There are no physical plant changes or changes in manner in which the plant will be operated as a result of this

change. Since the plant conditions and ECCS performance assumed in the analysis are consistent with the plant's current design, the proposed change in methodology will thus have no impact on the probability of a LOCA. When applied, the best estimate methodology shows that the ECCS is more effective than previously evaluated in mitigating the consequences of a LOCA, as lower peak clad temperatures are predicted relative to current 10 CFR 50.46 Appendix K results. Since the proposed best-estimate methodology is only applicable to a large break LOCA and since the application of the proposed methodology shows there is a high probability that all of the acceptance criteria contained in 10 CFR 50.46, Paragraph b are met, the proposed change does not increase the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no physical changes being made to the plant. No new modes of plant operation are being introduced. The parameters assumed in the analysis remain within the design limits of the existing plant equipment. All plant systems will perform as designed during the response to a potential accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does this change involve a significant reduction in a margin of safety?

Response: No.

It has been shown that the methodology used in the analysis would more realistically describe the expected behavior of V. C. Summer Nuclear Station systems during a postulated loss of coolant accident. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of loss of coolant accidents with different break sizes, different locations and other variations in properties are analyzed to provide assurance that the most severe postulated loss of coolant accidents are calculated. It has been shown by analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46, Paragraph b are met.

Pursuant to 10 CFR 50.91, the preceding analyses provide a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 (c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Evangelos C. Marinos.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: August 30, 2005.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to reflect the use of the Westinghouse Best Estimate Analyzer for Core Operations—Nuclear (BEACON) to augment the functional capability of the flux mapping system for the purpose of power distribution surveillances. In addition, editorial changes to the TSs are proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The PDMS [power distribution monitoring system] performs continuous core power distribution monitoring. This system utilizes the NRC-approved Westinghouse proprietary computer code BEACON to provide data reduction for incore flux maps, core parameter analysis, load follow operation simulation, and core prediction. It in no way provides any protection or control system function. Fission product barriers are not impacted by these proposed changes. The proposed changes occurring with PDMS will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident. The changes associated with the PDMS do not affect plant systems such that their function in the control of radiological consequences is adversely affected. These proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report Update (UFSAR).

Continuous on-line monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This results in more time (*i.e.*, earlier determination of an adverse condition developing) for operator action prior to having an adverse condition develop that could lead to an accident condition or to unfavorable initial conditions for an accident.

Each accident analysis addressed in the UFSAR is examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluations of reload cores are bounded by previously accepted analyses. This examination, which is performed in accordance with the requirements set forth in 10 CFR [Title 10 of the Code of Federal Regulations] 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The three editorial changes only correct typographical errors made in previously approved TS changes. They do not affect plant operation or structures, systems, and components important to safety.

Therefore, the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The implementation of the PDMS has no influence or impact on plant operations or safety, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with implementation of the PDMS do not result in a change to the design basis of any plant component or system. The evaluation of the effects of using the PDMS to monitor core power distribution parameters shows that all design standards and applicable safety criteria limits are met.

The proposed changes do not result in any event previously deemed incredible being made credible. Implementation of the PDMS will not result in more adverse conditions and will not result in any increase in the challenges to safety systems. The cycle-specific variables required by the PDMS are calculated using NRC-approved methods. The TS will continue to require operation within the required core operating limits and appropriate actions will be taken if limits are exceeded.

The three editorial changes only correct typographical errors made in previously approved TS changes. They do not affect plant operation or structures, systems, and components important to safety.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is not affected by implementation of the PDMS. The margin of safety provided by current TS is unchanged. The proposed changes continue to require operation within the core limits that are based on NRC-approved reload design methodologies. Appropriate measures exist to control the values of these cycle-specific limits. The proposed changes continue to ensure that appropriate actions will be taken

if limits are violated. These actions remain unchanged.

The three editorial changes only correct typographical errors made in previously approved TS changes. They do not affect plant operation or structures, systems, and components important to safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: David Terao.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: April 3, 2003, as supplemented December 23, 2003, December 9 and 17, 2004, and March 30 and August 19, 2005.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to support the application of an alternative source term methodology in accordance with Title 10 of the Code of Federal Regulations, Section 50.67, "Accident Source Term," with the exception that Technical Information Document 14844, "Calculation of Distance Factors for Power and Test Reactor Sites," was used as the radiation dose basis for equipment qualification.

Date of issuance: September 19, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 167.

Facility Operating License No. NPF–62: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 2, 2003 (68 FR 52234).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2005.

The supplements dated December 23, 2003, December 9 and 17, 2004, and March 30 and August 19, 2005 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: November 11, 2003, as supplemented April 16 and September 10, 2004, and March 30 and September 21, 2005.

Brief description of amendment: The amendment revised the instrument channel trip setpoint allowable values for thirteen Technical Specification (TS) functions at Clinton Power Station, Unit 1.

Date of issuance: September 27, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 168.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 16, 2004 (69 FR 12363).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 2005. The supplements dated April 16 and September 10, 2004, and March 30 and September 21, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: August 3, 2004, as supplemented on July 8 and August 26, 2005.

Brief description of amendments: The amendments extend the surveillance frequency interval from monthly to quarterly for Technical Specification surveillance requirement (SR) 3.3.3.1, which involves a channel functional test of each reactor trip circuit breaker (RTCB). SRs 3.3.3.1 and 3.3.3.2 will be scheduled such that the RTCBs testing is performed every 6 weeks, which meets the vendor-recommended interval for cycling each RTCB.

Date of issuance: September 26, 2005.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 275 and 252.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 4, 2005 (70 FR 400).

The July 8 and August 26, 2005, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 26, 2005.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–245, Millstone Power Station Unit No. 1, New London County, Connecticut

Date of application for amendment: September 8, 2004, as supplemented by letters dated May 5 and July 27, 2005.

Brief description of amendment: The amendment revised the Millstone Power Station, Unit No. 1 Technical Specifications (TSs) to support the implementation of the proposed Dominion Nuclear Facility Quality Assurance Program (Topical Report DOM–QA–1). Implementation of this Topical Report would create a common quality assurance program for all sites owned by Dominion Nuclear Connecticut, Inc. Review of this proposed amendment was requested in concert with the review of the Topical Report.

Date of issuance: September 15, 2005.

Effective date: As of the date of issuance, and shall be implemented by February 28, 2006.

Amendment No.: 115.

Facility Operating License No. DPR–21: The amendment revised the TSs.

Date of initial notice in Federal Register: January 18, 2005 (70 FR 2888).

The additional information provided in the supplemental letters dated May 5 and July 27, 2005, did not expand the scope of the application as noticed and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2005.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 15, 2004, as supplemented by letter dated August 23, 2004.

Brief description of amendment: The amendment revised the Facility Operating License DPR–65 to address the resolution of a non-conservative Technical Specifications (TSs) associated with control room isolation radiation monitoring instrumentation. Specifically, the amendment would revise the TSs to require two operable channels of control room isolation radiation monitoring instrumentation.

Date of issuance: September 23, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 289.

Facility Operating License No. DPR–65: The amendment revised the TSs.

Date of initial notice in Federal Register: January 18, 2005 (70 FR 2887).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 2005.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 15, 2004, as supplemented on June 23, 2005.

Brief description of amendment: The amendment approves modifications to the Fire Protection Program. Specifically, the modifications involve converting the existing automatic carbon dioxide fire suppression systems installed in the cable spreading room to manual actuation.

Date of issuance: September 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 227.

Facility Operating License No. NPF–49: The amendment allows for conversion from an automatic to a manual carbon dioxide suppression system in the cable spreading area.

Date of initial notice in ***Federal Register:*** July 6, 2004 (69 FR 40672). The supplement dated June 23, 2005, provided clarifying information and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2005.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendments: September 8, 2004, as supplemented by letters dated May 5 and July 27, 2005.

Brief description of amendments: The amendments revised the Millstone Power Station, Unit Nos. 2 and 3 Technical Specifications (TSs) to support the implementation of the proposed Dominion Nuclear Facility Quality Assurance Program (Topical Report DOM–QA–1). Implementation of this Topical Report would create a common quality assurance program for all sites owned by Dominion Nuclear Connecticut, Inc. Review of these proposed amendments was requested to be done in concert with the review of the Topical Report.

Date of issuance: September 15, 2005.

Effective date: As of the date of issuance, and shall be implemented by February 28, 2006.

Amendment Nos.: 288 and 226.

Facility Operating License Nos. DPR–65 and NPF–49: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** January 18, 2005 (70 FR 2888). The additional information provided in the supplemental letters dated May 5, and July 27, 2005, did not expand the scope of the application as noticed and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 6, 2004, as supplemented on February 16, and August 9, 2005.

Brief description of amendment: The amendment revised Technical Specification (TS) surveillance requirement 4.5.B.1 related to air testing of the drywell spray headers and nozzles. Specifically, the amendment changes the test frequency from once every five years to following maintenance that could result in nozzle blockage.

Date of Issuance: September 20, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 228.

Facility Operating License No. DPR–28: The amendment revised the TSs.

Date of initial notice in Federal Register: December 21, 2004 (69 FR 76492). The supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 20, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 30, 2004, as supplemented by letter dated May 20, 2005.

Brief description of amendment: The amendment revises the Technical Specifications to allow the use of M5 fuel cladding and of Mark-B-high thermal performance fuel in Arkansas Nuclear One, Unit 1, during its fuel Cycle 20 and beyond.

Date of issuance: September 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 226.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 9, 2004 (69 FR 64988). The supplement dated May 20, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2005.

No significant hazards consideration comments received: No.

Exelon Generating Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of application for amendment: December 17, 2004.

Brief description of amendment: The amendments revised Appendix B, Environmental Protection Plan (non-radiological), of the Braidwood Station Facility Operating Licenses.

Date of issuance: September 19, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 138.

Facility Operating License Nos. NPF–72 and NPF–77: The amendments revised the Environmental Protection Plan.

Date of initial notice in Federal Register: April 12, 2005 (70 FR 19115).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. STN 50–455, Byron Station, Unit No. 2, Ogle County, Illinois

Date of application for amendment: May 24, 2005.

Brief description of amendment: The amendment modifies the inspection requirements for portions of the steam generator (SG) tubes within the hot leg tubesheet region of the SGs.

Date of issuance: September 19, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 144.

Facility Operating License No. NPF–66: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 2005 (70 FR 38718).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 27, 2004, as supplemented by letters dated October 11, 2004, January 3, 2005, August 11, 2005, and September 12, 2005.

Brief description of amendments: The amendments add the Oscillation Power Range Monitor (OPRM) instrumentation to the Technical Specifications.

Date of issuance: September 22, 2005.

Effective date: As of the date of issuance and shall be implemented by December 31, 2005.

Amendment Nos.: 227, 222.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** December 7, 2004 (69 FR 70718). The October 11, 2004, and January 3, 2005, August 11, 2005, and September 12, 2005, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated: September 22, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 22, 2004, as supplemented December 3, 2004, and September 20, 2005. The September 20, 2005, supplement withdrew a portion of the original application from consideration.

Brief description of amendments: The amendments modified the operability and surveillance requirements in Technical Specification (TS) 3/4.1.3, "Control Rods." Specifically, the changes (1) exclude a fully-inserted immovable control rod from the shutdown action statement, and (2) limit the 24-hour exercise test of other control rods to a one-time occasion following detection of an immovable control rod.

Date of issuance: September 27, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 178 and 140.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the TSs.

*Date of initial notice in **Federal Register:*** May 24, 2005 (70 FR 29794). The September 20, 2005, supplement withdrew a portion of the original application from consideration and did not change the proposed no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 1, 2004.

Brief description of amendments: The amendments relocate the operability and surveillance requirements for the reactor coolant system safety/relief valve position instrumentation from the Limerick Generating Station (LGS) Technical Specifications (TSs) to the LGS Technical Requirements Manual (TRM) and plant procedures. Specifically, the amendments relocate TSs 3.4.2.c, 4.4.2.1, and the associated footnotes to the TRM. Additionally, the "Safety/Relief Valve Position Indicators" instrumentation is relocated from Tables 3.3.7.5–1 and 4.3.7.5–1 of TSs 3.3.7.5 and 4.3.7.5, respectively, to the TRM.

Date of issuance: September 27, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 179 and 141.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 26, 2004 (69 FR 62475).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: June 2, 2004, as supplemented February 23 and August 19, 2005.

Brief description of amendments: The amendments revised the BVPS–1 and 2, Technical Specifications (TSs) 3/4 3.1, "Reactor Trip System (RTS) Instrument," and 3/4 3.2, "Engineered Safety Features Actuation System (ESFAS) Instrument," to increase the surveillance interval from monthly to quarterly for certain RTS and ESFAS instrument channel functional tests.

Date of issuance: September 19, 2005.

Effective date: September 19, 2005.

Amendment Nos.: 267 and 149.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** July 6, 2004 (69 FR 40674).

The supplements dated February 23 and August 19, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: May 26, 2004, as supplemented by letters dated October 29 and December 3, 2004, and January 18, June 15, and August 15, 2005.

Brief description of amendments: The amendments extended the allowable outage time for the BVPS–1 and 2 emergency diesel generators (EDGs) from 72 hours to 14 days. The amendments also deleted surveillance requirement (SR) 4.8.1.1.2.b.1 concerning periodic EDG inspections. Requirements for periodic EDG inspections will be specified in a licensee-controlled EDG maintenance program referenced in the Updated Final Safety Analysis Report. The amendments also revised footnote (1) of TS 3.8.1.1 to clarify the wording to allow actions to be delayed for up to 7 days to allow time to restore fuel oil back to its specified limits when an EDG is inoperable solely due to failure to meet fuel oil property limits of SR 4.8.1.1.2.d.2 or SR 4.8.1.1.2.e.

Date of issuance: September 29, 2005.

Effective date: Upon issuance to be implemented within 60 days. The implementation shall include the commitments as described in the licensee's submittals dated May 26 and December 3, 2004, and January 18 and June 15, 2005, and as described in the NRC staff's safety evaluation related to this amendment.

Amendment Nos.: 268 and 150.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 6, 2004 (69 FR 40673).

The supplements dated October 29 and December 3, 2004, and January 18, June 15, and August 15, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2005.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: December 20, 2004.

Brief description of amendment: This amendment revises Technical Specifications Figures 3.1–1b, 3.4–2a, 3.4–2b and 3.4–3 to reflect an extension in the effectiveness of the pressure/temperature (P/T) limit curves from 23.6 to 35 effective full power years (EFPY). The low temperature overpressure protection requirements, which are based on the P/T limits, are also extended to 35 EFPY.

Date of Issuance: September 21, 2005.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 196.

Renewed Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 1, 2005 (70 FR 9993).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 2005.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: September 18, 2003, as supplemented on August 25 and September 15, 2005.

Brief description of amendments: The amendments revise Technical Specifications (TSs) for the control room ventilation systems to model the Combustion Engineering Standard Technical Specifications, NUREG–1432. In addition, Table 3.3–6, Radiation Monitoring Instrumentation, in each unit's TSs is revised to resolve minor inconsistencies that resulted from changes associated with previously issued Amendments 184 (Unit 1) and 127 (Unit 2). The amendments also correct some minor typographical errors.

Date of Issuance: September 27, 2005.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 197 and 139.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 28, 2003 (68 FR 61478). The August 25 and September 15, 2005, supplements did not affect the original proposed no significant hazards

determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2005.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: January 13, 2005, as supplemented by letters dated February 11, May 6, and June 9, 2005.

Brief description of amendment: The amendment allows a one-time extended allowed outage time (AOT) change to Improved Technical Specifications (ITS) 3.5.2, Emergency Core Cooling Systems (ECCS)—Operating; 3.6.6, Reactor Building Spray and Containment Cooling Systems; 3.7.8, Decay Heat Closed Cycle Cooling Water System (DC); and 3.7.10, Decay Heat Seawater System to allow the refurbishment of Decay Heat Seawater System Pump RWP–3B online.

Date of issuance: September 15, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 221.

Facility Operating License No. DPR–72: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 1, 2005 (70 FR 5246). The February 11, May 6, and June 9, 2005, supplements contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–1, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: July 24, 2005.

Brief description of amendments: The amendments incorporated a Point Beach Nuclear Plant (PBNP), Unit 1 reactor vessel head (RVH) drop accident analysis into the PBNP Final Safety Analysis Report and revised the PBNP, Unit 2 RVH drop accident analysis.

Date of issuance: September 23, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 220, 226.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the License.

Date of initial notice in ***Federal Register:*** August 16, 2005 (70 FR 48198).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 8, 2004, as supplemented by letters dated November 15, 2004, July 15 and August 8, 2005.

Description of amendment request: The amendments revised technical specification surveillance requirements (SR) 3.8.4.6 and SR 3.8.4.7, "DC Sources—Operating." Specifically, the amendments revised battery charger current values, added a new allowance for verifying battery charger capacity, and removed a restriction on the conduct of a modified performance discharge test.

Date of issuance: September 27, 2005.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 221, 227.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 19, 2004 (69 FR 51489). The November 15, 2004, July 15 and August 8, 2005, supplemental letters provided additional information that clarified the application, did not expand the scope of the application originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2005.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: September 30, 2004, and May 28, 2005.

Brief description of amendment: The amendment revises information in the Updated Final Safety Analysis Report (UFSAR) regarding the application of "leak-before-break" methodology for the emergency core cooling system accumulator lines A and B and the pressurizer surge line. The amendment permits the exclusion of these lines from the evaluation of the dynamic effects associated with postulated high-energy line breaks in the analyzed segments of the accumulator lines piping system and the pressurizer surge line piping system.

Date of issuance: September 22, 2005.

Effective date: As of the date of issuance and shall be implemented with the next update of the UFSAR in accordance with 10 CFR 50.71(e).

Amendment No.: 92.

Renewed Facility Operating License No. DPR–18: Amendment revised the UFSAR.

Date of initial notice in ***Federal Register:*** July 5, 2005 (70 FR 38721).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2005.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: August 12, 2005, as supplemented by letter dated August 24, 2005.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate changes in the steam generator (SG) inspection scope for Vogtle, Unit 2 during Refueling Outage 11 and the subsequent operating cycle. The proposed changes modify the inspection requirements for portions of SG tubes within the hot leg tubesheet region of the SGs. The license for Vogtle, Unit 1 is affected only due to the fact that Unit 1 and Unit 2 use common Technical Specifications.

Date of issuance: September 21, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 138/117.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2005 (70 FR 48985).

The supplement dated August 24, 2005, provided clarifying information that did not change the scope of the August 12, 2005, application nor the

initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 21, 2005.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: August 13, 2004, as supplemented by letters dated May 3 and July 7, 2005.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to reflect updated spent fuel rack criticality analyses for Units 1 and 2. The amendments also corrected a typographical error on Page vi of the TSs Table of Contents associated with the issuance of Amendments 130 and 109, for Units 1 and 2 TSs, respectively.

Date of issuance: September 22, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 139/118.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 9, 2004 (69 FR 64990).

The supplements dated May 3 and July 7, 2005, provided clarifying information that did not change the scope of the August 13, 2004, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 2005.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: November 21, 2003, as supplemented by letters dated May 5 and August 19, 2004, and July 11, 2005.

Brief description of amendment: The amendment allows the position of the control and shutdown rods to be monitored by a means other than the movable incore detectors.

Date of issuance: September 20, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 58.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 23, 2003 (68 FR 74267). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2005.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 24, 2005.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.3.1 entitled "Reactor Trip System (RTS) Instrumentation" and TS 3.3.2 entitled "Engineered Safety Feature Actuation System (ESFAS) Instrumentation", and Required Action Notes in the TSs to reflect wording in the Commissions Standard TSs incorporating the channel bypass capabilities as discussed in TS Task Force Traveler 418, Revision 2.

Date of issuance: September 29, 2005.

Effective date: Effective as of the date of issuance and shall be implemented in 90 days from the date of issuance.

Amendment Nos.: 121 and 121.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 26, 2005 (70 FR 21464).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: September 15, 2004, as supplemented by letter dated May 5, 2005.

Brief description of amendment: These amendments revise the Technical Specifications for North Anna Power Station, Units 1 and 2 to support the implementation of the proposed Topical Report DOM–QA–1, "Dominion Nuclear Facility Quality Assurance Program Description." The implementation of this topical report would create a common quality assurance program for North Anna, Surry, and Millstone Power Stations. The review of these proposed amendments was requested to be done in concert with the review of the Topical Report. The Topical Report was submitted to the NRC staff for review on August 24, 2004, and supplemented by letter dated May 5, 2005. By letter dated September 9, 2005, the NRC staff approved of Topical Report DOM–QA–1.

Date of issuance: September 15, 2005.

Effective date: As of the date of issuance and shall be implemented within 6 months from the date of issuance.

Amendment Nos.: 243 and 224.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 23, 2004 (69 FR 68187). The supplement dated May 5, 2005, contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: September 15, 2004, as supplemented by letter dated May 5, 2005.

Brief description of amendments: These amendments revise the Technical Specifications for Surry Power Station, Units 1 and 2 to support the implementation of the proposed Topical Report DOM–QA–1, "Dominion Nuclear Facility Quality Assurance Program Description." The implementation of this topical report would create a common quality assurance program for North Anna, Surry, and Millstone Power Stations. The review of these proposed amendments was requested to be done in concert with the review of the Topical Report. The Topical Report was submitted to the NRC staff for review on August 24, 2004, and supplemented by letter dated May 5, 2005. Subsequently, the NRC staff approved this Topical Report on September 9, 2005.

Date of issuance: As of the date of issuance and shall be implemented within 6 months from the date of issuance.

Effective date: September 15, 2005.

Amendment Nos.: 244/243.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 7, 2004 (69 FR 70723). The supplement dated May 5, 2005, contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party

to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: September 12, 2005.

Description of amendment request: The amendments replace the paragraph of Improved Technical Specification (ITS) Surveillance Requirement (SR) 3.8.1.18 with the wording of previous TS SR 4.8.1.1.2.e.11.

Date of issuance: September 23, 2005.

Effective date: Immediately.

Amendment Nos.: 290, 272.

Facility Operating License Nos. (DPR–58 and DPR–74): Amendment revises the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Herald-Palladium on September 18, 2005. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated September 23, 2005.

Attorney for licensee: James M. Petro, Jr., Esquire, One Cook Place, Bridgman, MI 49106.

NRC Section Chief: L. Raghavan.

Dated at Rockville, Maryland, this 3rd day of October 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–20168 Filed 10–7–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–31514]

Issuer Delisting; Notice of Application of Meredith Enterprises, Inc. to Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

October 4, 2005.

On September 15, 2005, Meredith Enterprises, Inc., 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)

[1] 15 U.S.C. 78*l*(d).

thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On September 8, 2005, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex. The Issuer stated the following reasons, among others, factored into the Board's decision to withdraw the Security from Amex. First, the ongoing costs and expenses, both direct and indirect, associated with the preparation and filing of the Issuer's periodic reports with the Commission. The Issuer expects to save each year approximately the equivalent of the current quarterly dividend in out-of-pocket accounting, legal, and other costs. Second, the substantial increase in costs and expenses that the Issuer expects to incur in 2006, and thereafter as a public company in light of the Sarbanes-Oxley Act of 2002, particularly in complying with Section 404 of such act. Third, going private will enable management to focus more time on running the business rather than on Commission compliance. Fourth, liquidity of the Security on Amex has been limited, and volatility has been greater than the Issuer believes is warranted.

The Issuer stated that it has met the requirements of Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration by complying with all the applicable laws in effect in Delaware, the State in which it is incorporated, and by providing Amex with the required documents for withdrawal from Amex.

The Issuer's application relates solely to the withdrawal of the Security from listing on Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before October 28, 2005, 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 1–31514 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–31514. 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.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5560 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52559; File No. 10–131]

The Nasdaq Stock Market Inc., Notice of Filing of Amendment Nos. 4 and 5 to Its Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

October 4, 2005.

On August 15, 2005, The Nasdaq Stock Market Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 4 [1] to its application for registration as a national securities exchange ("Form 1") under Section 6 [2] of the Securities Exchange Act of 1934 ("Exchange Act"). Nasdaq's Amendment No. 4 supersedes and replaces Nasdaq's original filing and intervening amendments. On September 23, 2005, Nasdaq filed Amendment No. 5 to its Form 1.[3] The Commission is publishing this notice to solicit comments on Nasdaq's Form 1 as amended by Amendment Nos. 4 and 5.[4]

I. Background

Nasdaq originally submitted its Form 1 on March 15, 2001, which the Commission published for comment in the **Federal Register** on June 13, 2001.[5] Nasdaq subsequently amended its Form 1 three times.[6] In response to Nasdaq's Form 1 and its amendments, the Commission has received 82 comment letters.[7]

Nasdaq currently is exempt from the definition of an "exchange" under Rule 3a1–1 because it is operated by the National Association of Securities Dealers, Inc. ("NASD").[8] In order for NASD to relinquish regulatory control of Nasdaq, Nasdaq must register as a national securities exchange.[9] Accordingly, Nasdaq has filed a completely new Form 1, including all of

[1] *See* Letter to Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), SEC, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated August 15, 2005 ("Amendment No. 4").

[2] 15 U.S.C. 78(f).

[3] *See* Letter to Robert L.D. Colby, Deputy Director, Division, SEC, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated September 23, 2005 ("Amendment No. 5"). In Amendment No. 5, Nasdaq corrected typographical errors that were submitted in Amendment No. 4.

[4] Complete copies of Nasdaq's Amendment Nos. 4 and 5 to its Form 1 are available in the Commission's Public Reference Room, File No. 10–131. Portions of Nasdaq's Form 1 as amended by Amendment Nos. 4 and 5, including Nasdaq's rules, are available on the Commission's Internet Web site (*http://www.sec.gov*).

[5] *See* Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 ("Original Notice"). The Commission extended the comment period for Nasdaq's Original Notice for 30 days. *See* Exchange Act Release No. 44625 (July 31, 2001), 66 FR 41056 (August 6, 2001).

[6] *See* Letters from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Annette Nazareth, Director, Division, SEC, dated November 13, 2001 ("Amendment No. 1"); Jonathan G. Katz, Secretary, SEC, dated December 5, 2001 ("Amendment No. 2"); and Annette Nazareth, Director, Division, SEC, dated January 8, 2002 ("Amendment No. 3").

[7] The comment letters are available in the Commission's Public Reference Room and some of these comment letters are available on the Commission's Internet Web site (*http://www.sec.gov*).

[8] Pursuant to Rule 3a1–1, an organization, association, or group of persons shall be exempt from the definition of "exchange" if it is operated by a national securities association. Unless another exemption from the definition of "exchange" applies, such organization, association, or group of persons that otherwise meets the definition of an "exchange" must register as such with the Commission. 17 CFR 240.3a1–1.

[9] For a complete description of NASD's current ownership in Nasdaq see Exhibit K to the Form 1.

the required exhibits, to register as a national securities exchange.

II. Nasdaq's Amended Exchange Registration

Nasdaq filed Amendment No. 4 to, among other things, address concerns raised by its original application.[10] Specifically, Amendment No. 4 would limit the ambit of Nasdaq's proposed exchange to those transactions that occur in the Nasdaq Market Center, formerly known as SuperMontage, and Brut.[11] Nasdaq also has proposed that all transactions on the Nasdaq Market Center be executed in price/time priority.[12] Trades that are executed in the internal systems of NASD members would be reported under NASD rules to NASD's Alternative Display Facility ("ADF") or a proposed new NASD facility. This new facility would be jointly owned by Nasdaq and NASD but would be a facility of NASD and thus would be subject to NASD's exclusive regulatory control.[13]

Nasdaq proposes to require its members to comply with NASD's Order Audit Trail ("OATS") requirements. To do so, Nasdaq has carried over certain OATS rules into its own rulebook and has incorporated by reference other NASD OATS requirements.[14] In addition, Nasdaq members would be required to append an identifier to all orders entered into Nasdaq for purposes of tracking the order in OATS.[15] Because Nasdaq will require its members to report order information to OATS, Nasdaq will have access to certain OATS data for regulatory purposes. The Commission requests comment on the extent to which Nasdaq should be able to use OATS data for non-regulatory purposes. The Commission further requests comment on whether Nasdaq should have access to OATS data regarding: (1) all orders its members receive, including those orders that are routed to markets other than Nasdaq; and (2) reports of executions by its members that are reported to the new NASD trade reporting facility.[16]

To oversee the performance of its regulatory obligations, Nasdaq has proposed to create a fully-independent committee of the exchange's Board of Directors, the Regulatory Oversight Committee ("ROC").[17] This committee will consist of three Public Directors that satisfy the definition "independent director" set forth in proposed Nasdaq Rule 4200. The ROC would, among other things, be responsible for monitoring the adequacy and effectiveness of Nasdaq's regulatory program. In addition, the ROC would oversee the Chief Regulatory Officer ("CRO") by periodically meeting with the CRO in executive session to consider regulatory issues. The ROC also would be informed about the compensation of the CRO, and his promotion or termination (including reasons). Finally, the regulatory budget would be presented to the ROC so that its members may monitor the adequacy of resources available for Nasdaq's regulatory program.

Nasdaq proposes that its CRO have general supervision of the regulation of the exchange, including overseeing the proposed exchange's surveillance, examination, and enforcement functions, and administering a regulatory services agreement.[18] The CRO would be an executive vice president or senior vice president that reports to the Chief Executive Officer, and could also serve as Nasdaq's General Counsel.

The Commission requests comment on whether Nasdaq's proposed regulatory structure, including the ROC and CRO, is consistent with Section 6(b)(1) of the Exchange Act,[19] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act and comply, and enforce compliance by its members and persons associated with its members, with the Exchange Act, the rules thereunder, and the exchange's rules. Specifically, does Nasdaq's proposed structure insulate its regulatory function from its market and other commercial operations so that it may carry out its regulatory obligations under the Exchange Act?

The Form 1 provides detailed information about Nasdaq and how it proposes to satisfy the requirements of the Exchange Act. The Commission shall grant such registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to Nasdaq are satisfied.[20] In addition to the issues discussed above, there are a number of implications to Nasdaq's separation from NASD and its application to register and operate as an exchange. For example, while Section 10(a) of the Exchange Act[21] does not apply to the trading of Nasdaq stocks, if the Commission approves Nasdaq's registration as an exchange, Section 10(a) will apply to such trading, absent an exemption. In addition, if Nasdaq becomes an exchange, its members would be subject to Section 11 of the Exchange Act.[22] Moreover, Nasdaq must demonstrate that it can satisfy its obligations under Section 11A of the Exchange Act.[23]

Nasdaq's application to register as a national securities exchange also has implications for NASD, which, as a national securities association, will continue to be required to collect bids, offers, quotation sizes and transaction reports from those entities that wish to trade listed securities, including Nasdaq securities, otherwise than on a national securities exchange.[24] Under Section 15A of the Exchange Act, NASD must have a quotation reporting facility for non-Nasdaq exchange-listed securities.[25]

[10] In December 2004, Nasdaq filed with the Commission a proposed rule change to amend the rules that govern how executions occur in the Nasdaq Market Center to eliminate the rules that permit executions to occur outside of price/time priority. *See* Exchange Act Release No. 50845 (December 13, 2004), 69 FR 76022 (December 20, 2004) ("December Proposal"). Specifically, Nasdaq proposed to eliminate the execution algorithm that requires orders to be internalized in the Nasdaq Market Center, the Directed Order process, and the use of preferenced orders. The Commission published this proposal and Nasdaq has asked the Commission to consider approval of this proposal in connection with its application to register as a national securities exchange. Subsequent to the December Proposal, Nasdaq filed another proposed rule change to eliminate immediately the Directed Order Process, which the Commission approved on July 28, 2005. *See* Exchange Act Release No. 52148, 70 FR 44711 (August 3, 2005). These changes to the rules that govern the execution of orders in the Nasdaq Market Center are reflected in Amendment No. 4. In addition, the Over-the-Counter Bulletin Board is no longer part of Nasdaq's exchange application and will remain with NASD. *See* NASD Proposal, infra note 13.

[11] Nasdaq acquired Brut in September 2004 and the rules governing the execution of transactions on Brut were approved by the Commission in March 2005. *See* Exchange Act Release No. 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005). Nasdaq has included the rules governing transactions executed in the Brut system as part of Amendment No. 4 to its Form 1. The Commission notes that Nasdaq has entered into an agreement to purchase Instinet, which will result in Nasdaq's ownership of Inet. This transaction has not closed and thus, Nasdaq has not submitted the rules governing the operation of Inet with this latest amendment.

[12] *See* December Proposal, *supra* note 10.

[13] *See* Exchange Act Release No. 52049 (July 15, 2005), 70 FR 42398 (July 22, 2005) ("NASD Proposal").

[14] *See* proposed Nasdaq Rule 6950 Series.

[15] *See* proposed Nasdaq Rule 6954(c). NASD has proposed a corresponding change to its OATS rules. *See* NASD Proposal, supra note 13.

[16] *See* NASD Proposal, supra note 13.

[17] *See* proposed Article III, Section 5(e) of the Nasdaq Exchange By-Laws.

[18] *See* proposed Article IV, Section 7 of the Nasdaq Exchange By-Laws.

[19] 15 U.S.C. 78f(b)(1).

[20] 15 U.S.C. 78s(a).

[21] 15 U.S.C. 78j(a).

[22] 15 U.S.C. 78k.

[23] 15 U.S.C. 78k-1.

[24] 17 CFR 242.602(a)(1)(ii), Rule 242.601.

[25] 15 U.S.C. 78o-3.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Nasdaq's Amendment Nos. 4 and 5 to its Form 1 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 10–131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 10–131. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to Nasdaq's Form 1 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. 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. The Commission requests that commenters focus on issues raised in Nasdaq's Form 1, File No. 10–131, when submitting comments on this notice. All submissions should refer to File Number 10–131 and should be submitted on or before November 10, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–20314 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–10382]

Issuer Delisting; Notice of Application of Valley Forge Scientific Corp. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the Boston Stock Exchange, Inc.

October 4, 2005.

On September 16, 2005, Valley Forge Scientific, Corp., a Pennsylvania 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, no par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The Board of Directors ("the Board") of the Issuer approved resolutions on September 12, 2005 to withdraw the Security from listing on BSE. The Issuer stated that the Board decided to withdraw the Security from BSE for the following reasons: (i) The Security has been, and expects to continue to be, traded on The Nasdaq SmallCap Market ("Nasdaq"); and (ii) additionally, the Security has not been actively traded on BSE during the last ten years. Therefore, the Board determined to delist the Security from BSE for administrative efficiency.

The Issuer stated in its application that it has complied with applicable rules of BSE by complying with all applicable laws in the Commonwealth of Pennsylvania, the State in which the Issuer is incorporated, and by providing BSE with the required documents governing the withdrawal of securities from listing and registration on BSE. The Issuer's application relates solely to the withdrawal of the Security from listing on BSE and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before October 28, 2005 comment on the facts bearing upon whether the application has been made in accordance with the rules of BSE, 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 1–10382 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–10382. 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.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5559 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

An additional Closed Meeting has been scheduled for Wednesday, October 12, 2005 at 9 a.m.

Commissioners and certain staff members who have an interest in the matter will attend the closed meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

[5] 17 CFR 200.30–3(a)(1).

U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the closed meeting.

Commissioner Nazareth, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be: Institution and settlement of an injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 5, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–20389 Filed 10–6–05; 11:37 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52553; File No. SR–Amex–2004–62]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 3 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 Relating to Listing and Trading of Shares of the xtraShares Trust

October 3, 2005.

I. Introduction

On August 2, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 411 ("Duty to Know and Approve Customers") and Rule 1000A ("Index Fund Shares") and related Commentary .02 to accommodate the listing of Index Fund Shares that seek to provide investment results that exceed the performance of a securities index by a specified percentage or that seek to provide investment results that correspond to the inverse or opposite of the index's performance. The proposed rule change will accommodate listing on the Exchange of the following eight (8) funds of the xtraShares Trust (the "Trust"): Ultra500 Fund; Ultra100 Fund; Ultra30 Fund; UltraMid-Cap 400 Fund; Short500 Fund; Short100 Fund; Short30 Fund; and ShortMid-Cap 400 Fund (the "Funds"). On March 4, 2005, the Exchange filed Amendment No. 1.[3] On May 9, 2005, the Exchange filed Amendment No. 2.[4] The Exchange filed Amendment No. 3 on August 1, 2005.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 9, 2005.[6] The Commission received no comments on the proposal. On September 15, 2005, the Exchange filed Amendment No. 4.[7] This order approves the proposed rule change as amended. Simultaneously, the Commission provides notice of, and grants accelerated approval to, Amendment No. 4.

II. Description of Proposed Rule Change

As set forth in the Notice, the Exchange proposes to amend Rule 1000A and related Commentary .02 to accommodate the listing of Index Fund Shares that seek to provide investment results that exceed the daily performance of a specified stock index by a specified percentage (*e.g.*, equal to 200 percent of the index value) or that seek to provide investment results that correspond to the inverse or opposite of the index's daily performance.[8]

The Exchange proposes to list, under amended Rule 1000A, the shares of the Funds ("Shares"). Four of the Funds—the Ultra500, Ultra100, Ultra30, and UltraMid-Cap400 Funds (the "Bullish Funds")—seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Standard and Poor's 500® Index ("S&P 500"), the Nasdaq-100® Index ("Nasdaq 100"), the Dow Jones Industrial Average℠ ("DJIA"), and the S&P MidCap400™ Index ("S&P MidCap"), respectively. (These indexes are referred to herein as "Underlying Indexes".)[9] Each of these Funds, if successful in meeting its objective, should gain, on a percentage basis, approximately twice as much as the Fund's Underlying Index when the prices of the securities in such Index increase on a given day and should lose approximately twice as much when such prices decline on a given day. In addition, four other Funds—the Short500, Short100, Short30, and ShortMid-Cap400 Funds (the "Bearish Funds")—seek daily investment results, before fees and expenses, which correspond to the inverse or opposite of the daily performance (−100%) of the S&P 500, Nasdaq-100, DJIA, and S&P MidCap, respectively.[10] If each of these Funds is successful in meeting its objective, the net asset value (the "NAV")[11] of Shares of each Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when the prices of the securities in the index rise on a given day.

ProFunds Advisors LLC is the investment adviser (the "Advisor") to each Fund. The Advisor is registered under the Investment Advisers Act of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange modified the proposed rule text and accompanying description. Amendment No. 1 replaced Amex's original submission in its entirety.

[4] In Amendment No. 2, the Exchange clarified the portfolio investment methodology and made certain other clarifications to the description of the proposal.

[5] In Amendment No. 3, the Exchange provided additional details regarding the disclosure of the portfolio holdings of the Fund Shares and made certain other minor corrections to the rule text and proposal. Amendment No. 3 replaced Amex's earlier submissions in their entirety.

[6] *See* Securities Exchange Act Release No. 52197 (August 2, 2005), 70 FR 46228 ("Notice").

[7] In Amendment No. 4, the Amex clarified that Authorized Participants ("APs"), as defined in the proposal, who create and redeem Index Fund Shares, will deposit and receive only stock and/or cash, not other financial instruments.

[8] Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act"), as well as the Exchange Act. Index Fund Shares are defined in Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

[9] Exchange-traded funds ("ETFs") based on each of the Underlying Indexes are listed and/or traded on the Exchange. *See* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (S&P 500 SPDR); 39143 (September 29, 1997), 62 FR 51917 (October 3, 1997) (DIAMONDS); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (QQQ); and 35689 (May 8, 1995), 60 FR 26057 (May 16, 1995) (S&P MidCap 400). The Statement of Additional Information ("SAI") for the Funds discloses that each Fund reserves the right to substitute a different Index. Substitution could occur if the Index becomes unavailable, no longer serves the investment needs of shareholders, the Fund experiences difficulty in achieving investment results that correspond to the Index, or for any other reason determined in good faith by the Board. In such instance, the substitute index will attempt to measure the same general market as the current index. Shareholders will be notified (either directly or through their intermediary) in the event a Fund's current index is replaced. In the event a Fund substitutes a different index, the Exchange will file a new Rule 19b–4 filing with the Commission.

[10] *Id.*

[11] The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4:00 p.m. e.s.t.

1940.[12] While the Advisor will manage each Fund, the Trust's Board of Trustees (the "Board") will have overall responsibility for the Funds' operations. The composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act, and the Funds will comply with Rule 10A–3 of the Exchange Act.

SEI Investments Distribution Company (the "Distributor" or "SEI"), a broker-dealer registered under the Exchange Act, will act as the distributor and principal underwriter of the Shares.

JPMorgan Chase Bank will act as the Index Receipt Agent for the Trust, for which it will receive fees. The Index Receipt Agent will be responsible for transmitting the Deposit List (as defined below) to National Securities Clearing Corporation ("NSCC") and for the processing, clearance and settlement of purchase and redemption orders through the facilities of Depository Trust Company ("DTC") and NSCC on behalf of the Trust. The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and NSCC.[13]

Shares of the Funds issued by the Trust[14] will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund. Additional details about the Trust, the operation of the Funds, and trading of the Shares are set out in the Notice.

Investment Objective of the Funds

Each Bullish Fund will invest its assets, according to the Exchange, based upon the same strategies as conventional index funds. These Bullish Funds generally will hold at least 85% of their assets in the component equity securities ("Equity Securities") of the relevant Underlying Index. The remainder of assets will be devoted to financial instruments (as defined below) that are intended to create the additional needed exposure to such Underlying Index necessary to pursue the Fund's investment objective.

The Bearish Funds will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Index. Each Bearish Fund will rely on establishing positions in financial instruments (as defined below) that provide, on a daily basis, the inverse or opposite of the investment results of the relevant Underlying Index. Normally 100% of the value of the portfolios of each Bearish Fund will be devoted to such financial instruments and money market instruments, including U.S. government securities and repurchase agreements (the "Money Market Instruments").

The financial instruments to be held by any of the Bullish or Bearish Funds may include stock index futures contracts, options on futures contracts,[15] options on securities and indices, equity caps, collars and floors as well as swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and Money Market Instruments. The Advisor may invest in such Money Market Instruments and Financial Instruments, rather than in Equity Securities, when it would be more efficient or less expensive for the Funds.

The Exchange states that the counterparties to the swap agreements and/or forward contracts will be major broker-dealers and banks. The creditworthiness of each potential counterparty is assessed by the Advisor's credit committee pursuant to guidelines approved by the Board. Existing counterparties are reviewed periodically by the Board. Each Fund may also enter into repurchase and reverse repurchase agreements with terms of less than one year and will only enter into such agreements with (i) Members of the Federal Reserve System, (ii) primary dealers in U.S. government securities, or (iii) major broker-dealers.[16] Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as "cover" for Financial Investments, as required by the 1940 Act, or to earn interest.

Additional details about the Funds' investment techniques, including additional regulatory requirements, are described in the Notice.

While the Advisor will attempt to minimize any "tracking error" between the investment results of a particular Fund and the performance or inverse performance (and specified multiple thereof) of its Underlying Index, certain factors may tend to cause the investment results of a Fund to vary from such relevant Underlying Index or specified multiple thereof.[17] The Funds are expected to have a daily tracking error of less than 5%[18] (500 basis points) relative to the specified (inverse) multiple of the performance of the relevant Underlying Index.

The Portfolio Investment Methodology

The Advisor seeks to establish investment exposure for each Bullish and Bearish Fund corresponding to each Fund's investment objective based upon its portfolio investment methodology (the "Methodology").

The Methodology takes into account a variety of specified criteria and data (the "Inputs"), the most important of which are: (i) Net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day; (ii) the amount of exposure required to the Underlying Index; and (iii) the positions in Equity Securities, Financial Instruments and/or Money Market Instruments at the beginning of each trading day. The Advisor, pursuant to the Methodology, will then mathematically determine the end-of-day positions to establish the solution (the "Solution"), which may consists of Equity Securities, Financial Instruments, and Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of Equity Securities, Financial Instruments, and/or Money Market Instruments that must be bought or sold for the day. The Solution accordingly represents the required exposure and is converted into an order or orders, as applicable, to be filled that same day.

Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trades are

[12] The Trust, Advisor, and Distributor ("Applicants") have filed with the Commission an Application for an Order under Sections 6(c) and 17(b) of the 1940 Act (the "Application") for the purpose of exempting the Funds of the Trust from various provisions of the 1940 Act. (File No. 812–12354). The Exchange states that the information provided in this Rule 19b–4 filing relating to the Funds is based on information included in the Application, which contains additional information regarding the Trust and Funds.

[13] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005 (as to Index Receipt Agent).

[14] The Fund is also registered as a business trust under the Delaware Corporate Code. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

[15] Each Fund may engage in transactions in futures contracts on designated contract markets where such contracts trade and will only purchase and sell futures contracts traded on a U.S. futures exchange or board of trade.

[16] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on September 22, 2005 (as to insertion of term "major" in describing broker-dealer counterparties).

[17] Factors that may cause a Fund to vary from the relevant Underlying Index and investment objective are described in more detail in the Notice.

[18] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 1, 2005 (as to removal of terminology "in absolute return").

made. Thus, the NAV calculated for a Fund on any given day reflects the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades will then be reflected in the NAV for that Fund that is calculated as of 4 p.m. on Tuesday.

The timeline for the Methodology is as follows. APs have a 3 p.m. cut-off for orders submitted by telephone, facsimile, and other electronic means of communication and a 4 p.m. cut-off for orders received via mail. AP orders by mail are exceedingly rare. Orders are received by the Distributor and relayed to the Advisor within ten (10) minutes. The Advisor will know by 3:10 p.m. the number of creation/redemption orders by APs for that day. The Advisor, taking into account creation and redemption orders for that day, then places orders, consistent with the Solution, at approximately 3:40 p.m. as market-on-close (MOC) orders. At 4 p.m., the Advisor will again look at the exposure to make sure that these orders placed are consistent with the Solution, and as described above, the Advisor will execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

Availability of Information About the Shares and Underlying Indexes

The Trust's or Advisor's Web site and/or that of the Exchange, which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (i) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV;[19] (ii) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the reported closing price and NAV, and the magnitude of such premiums and discounts; (iii) its Prospectus and Product Description; and (iv) other quantitative information such as daily trading volume. The Product Description for each Fund will inform investors that the Advisor's Web site has information about the premiums and discounts at which the Fund's Shares have traded.[20]

The Amex will disseminate for each Fund on a daily basis by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value (the "IIV") (defined and discussed below under "Dissemination of Indicative Intra-Day Value (IIV)"), recent NAV, shares outstanding, estimated cash amount, and total cash amount per Creation Unit (defined below). The Exchange will make available on its Web site daily trading volume, closing price, the NAV, and final dividend amounts, if any, to be paid for each Fund. The closing prices of the Deposit Securities (defined below) are readily available from, as applicable, exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust (*http://www.profunds.com*) and/or the Exchange (*http://www.amex.com*). The Trust expects that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the names and number of shares held of each specific Equity Security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the "IIV File" (described below) and the "PCF File" (described below). Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site as well as in the IIV File and PCF File provided to APs. The format of the public Web site disclosure and the IIV and PCF Files will differ because the public Web site will list all portfolio holdings, while the IIV and PCF Files will similarly provide the portfolio holdings but in a format appropriate for APs, *i.e.*, the exact components of a Creation Unit (defined below). Accordingly, all investors will have access to the current portfolio composition of each Fund through the Trust Web site at *http://www.profunds.com* and/or the Exchange's Web site at *http://www.amex.com*.[21]

Beneficial owners of Shares ("Beneficial Owners") will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, *e.g.*, *http://www.bloomberg.com*. Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only). The value of each Underlying Index will be updated intra-day on a real time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day by the Amex or another organization authorized by the relevant Underlying Index provider.

Creation and Redemption of Shares

Each Fund will issue and redeem Shares only in initial aggregations of at least 50,000 ("Creation Units"). Purchasers of Creation Units will be able to separate the Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar

[19] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 1, 2005 (as to removal of language regarding Web site disclosure of the "mid-point of the bid-asked spread at the time that the Fund's NAV is calculated" and substitution of Web site disclosure of the "reported closing price").

[20] *See* "Prospectus Delivery" below regarding the Product Description. The Application requests relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, Commentary .03 of Amex Rule 1000A requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Also, any sales material must reference the availability of such circular and the prospectus. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

[21] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005 (as to daily disclosure to the public of the portfolio composition that will be used to calculate the Fund's NAV later that day).

revaluation). The initial value of a Share for each of the Bullish Funds and Bearish Funds is expected to be in the range of $50–$250.

At the end of each business day, the Trust will prepare the list of names and the required number of shares of each Deposit Security (as defined below) to be included in the next trading day's Creation Unit for each Bullish Fund. The Trust will then add to the Deposit List (as defined below), the cash information effective as of the close of business on that business day and create a portfolio composition file ("PCF") for each Fund, which it will transmit (via the Index Receipt Agent) to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an "IIV File," which it will use to disclose the Funds' holdings of Financial Instruments.[22] The IIV File will contain, for each Bullish Fund (to the extent that it holds Financial Instruments) and Bearish Fund, information sufficient by itself or in connection with the PCF File and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund.[23]

The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for Bearish Funds (*e.g.*, the amount of the cash deposited for Creation Unit Aggregations or paid upon redemption of the Shares) and, together with the information on Equity Securities contained in the PCF, will be sufficient for calculation of IIV for Bullish Funds, during such next business day.[24] The IIV File, together with the applicable information in the PCF in the case of Bullish Funds, will also be the basis for the next business day's NAV calculation.

For the Bullish Funds, the PCF File will be prepared by the Trust after 4 p.m. and transmitted by the Index Receipt Agent to NSCC by 6:30 p.m. By 6:30 p.m., all NSCC participants (such as APs) and the Exchange will also have access to the Web site containing the IIV File. The IIV File will reflect the trades made on behalf of a Fund that business day and the creation/redemption orders for that business day. Accordingly, by 6:30 p.m., APs will know the composition of the Fund's portfolio for the next trading day.

The Cash Balancing Amount (defined below) will also be determined shortly after 4 p.m. each business day. Although the Cash Balancing Amount for most exchange-traded funds is a small amount reflecting accrued dividends and other distributions, for both the Bullish and Bearish Funds it is expected to be larger due to changes in the value of the Financial Instruments, *i.e.*, daily mark-to-market.[25]

Creation and Redemption of the Bullish Funds

The process for APs[26] purchasing Creation Units from Funds or redeeming Shares in Creation Unit-Size Aggregations from the Funds is set forth in the Notice. In summary, persons purchasing Creation Unit Aggregations from the Bullish Funds do so through an "in-kind" process in which a basket of securities (the "Deposit Securities"), together with an amount of cash (the "Cash Balancing Amount"), plus the applicable transaction fee is deposited with the Fund. The redeeming AP deposits Bullish Fund Shares in Creation Unit-Size Aggregations in exchange for a basket of securities (the "Redemption Securities"), which in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day. The redeeming AP may receive from or pay to the Fund a Cash Balancing Amount and also must pay to the Fund a transaction fee. A Fund has the right to require creation payments or a right to make redemption payments in cash, in kind, or a combination of each.

Creation and Redemption of the Bearish Funds

As stated, the Bearish Funds will be purchased and redeemed entirely for cash ("All-Cash Payments"). The use of an All-Cash Payment for the purchase and redemption of Creation Unit Aggregations of the Bearish Funds is due to the limited transferability of Financial Instruments.

The Exchange believes that Bearish Fund Shares will not trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of a Share deviates enough from the Creation Unit, on a per share basis, to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy Shares at a discount, immediately cancel them in exchange for the Creation Unit and sell the underlying securities in the cash market at a profit, or sell Shares short at a premium and buy the Creation Unit in exchange for the Shares to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.[27]

Placement of Creation Unit Aggregation Purchase and Redemption Orders

Payment with respect to Creation Unit Aggregations of the Bullish Funds placed through the Distributor generally will be made by In-Kind Payments and cash, while All-Cash Payments will be accepted in the case of the Bearish Funds and certain other cases. Placement of Creation Unit Aggregation Purchase and Redemption Orders is described in more detail in the Notice and is generally done on a T+3 basis.

[22] The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all NSCC participants and the Exchange will have access to the password and the Web site containing the IIV File. However, the Fund will disclose to the public identical information, but in a format appropriate to public investors, at the same time the Fund discloses the IIV and PCF files to industry participants. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005.

[23] An example of the information that will be provided in the IIV File for a Bullish Fund holding Equity Securities and Bearish Fund holding swaps and futures contracts (and Bullish Fund to the extent it holds such financial instruments) is set forth in the Notice.

[24] As noted below in "Dissemination of Indicative Intra-Day Value (IIV)," the Exchange will disseminate through the facilities of the CTA, at regular intervals (currently anticipated to be 15 second intervals) during the Exchange's regular trading hours, the IIV on a per Fund Share basis.

[25] See Notice for an example of the calculation of the Cash Balancing Amount.

[26] APs are the only persons that may place orders to create and redeem Creation Units. APs must be registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC.

[27] In their 1940 Act Application, the Applicants stated that they do not believe that All-Cash Payments will affect arbitrage efficiency. This is because Applicants believe it makes little difference to an arbitrageur whether Creation Unit Aggregations are purchased in exchange for a basket of securities or cash. The important function of the arbitrageur is to bid the share price of any Fund up or down until it converges with the NAV. Applicants note that this can occur regardless of whether the arbitrageur is allowed to create in cash or with a Deposit Basket. In either case, the arbitrageur can effectively hedge a position in a Fund in a variety of ways, including the use of market-on-close contracts to buy or sell the underlying Equity Securities and/or Financial Instruments.

Dividends

Dividends, if any, from net investment income will be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Certain Funds may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year.

Dividends and other distributions on the Shares of each Fund will be distributed, on a pro rata basis, to Beneficial Owners of such Shares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with proceeds received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Dividend Reinvestment Service") available for use by Beneficial Owners for reinvestment of their cash proceeds but certain individual brokers may make a Dividend Reinvestment Service available to Beneficial Owners. Additional information about this service is provided in the Notice.

Dissemination of Indicative Intra-Day Value (IIV)

In order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, the Exchange will disseminate through the facilities of the CTA: (i) Continuously throughout the trading day, the market value of a Share; and (ii) every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or "IIV" [28] as calculated by a third party calculator (the "IIV Calculator") currently expected to be the Exchange.[29] Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator will calculate an IIV for each Fund, including those Funds that do not hold Equity Securities, in the manner discussed below. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV may not reflect the value of all securities included in the Underlying Index. In addition, the IIV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IIV on a per Share basis disseminated during Amex trading hours, should not be viewed as a real time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by the Amex is expected to be close to the most recently calculated Fund NAV on a per share basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the value of the Deposit Securities during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

IIV Calculation For the Bullish Funds holding Equity Securities and Financial Instruments. The IIV Calculator will disseminate the IIV throughout the trading day for Funds holding Equity Securities and Financial Instruments. The IIV Calculator will determine such IIV by: (i) Calculating the estimated current value of Equity Securities held by such Fund by (a) calculating the percentage change in the value of the Deposit List (as provided by the Trust) and applying that percentage value to the total value of the Equity Securities in the Fund as of the close of trading on the prior trading day (as provided by the Trust) or (b) calculating the current value of all of the Equity Securities held by the Fund (as provided by the Trust); (ii) calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (iii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iv) adding the values from (i), (ii), and (iii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs) to arrive at a value; and (v) dividing that value by the total shares outstanding (as provided by the Trust) to obtain the current IIV.

IIV Calculation for the Bearish Funds. The IIV Calculator will disseminate the IIV throughout the trading day for the Bearish Funds. The IIV Calculator will determine such IIV by: (i) Calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (ii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iii) adding the values from (i) and (ii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value; and (iv) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. As stated, the initial price of a Share is expected to be in the range of $50–$250.

The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex Company Guide will be based upon the year-end aggregate number of outstanding shares in all Funds of the Trust listed on the Exchange.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated Index Fund

[28] The IIV is also referred to by other issuers as an "Underlying Trading Value," "Indicative Optimized Portfolio Value (IOPV)," and "Intra-day Value" in various places such as the prospectus and marketing materials for different exchange-traded funds.

[29] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

Shares, including the Shares, as eligible for this treatment.[30]

Rule 190

Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including the Shares. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations, regarding the application of Commentary .03 to Rule 1000A the Funds. The Information Circular will further inform members and member organizations of the prospectus and/or Product Description delivery requirements that apply to the Funds. The Application included a request that the exemptive order also grant relief from Section 24(d) of the 1940 Act. Any Product Description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the Application.

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors would include, but are not limited to, (i) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. (See Amex Rule 918C). In the case of any Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. This notification from the Advisor will be through phone, e-mail and/or fax. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in shares of the Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (ii) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (i) The customer's financial status; (ii) the customer's tax status; (iii) the customer's investment objectives; and (iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in each Fund's prospectus and Statement of Additional Information, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Exchange Act. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Hours of Trading/Minimum Price Variation

The Funds will trade on the Amex until 4:15 p.m. (New York time) each business day. Shares will trade with a minimum price variation of $.01.

III. Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with Section 6 of the Act,[31] and the rules and regulations thereunder, applicable to a national securities exchange.[32] The Commission believes that the Exchange's proposed listing standards, trading rules, suitability and disclosure rules for the Funds are consistent with the Act.

A. Surveillance

The Commission believes that because the Underlying Indexes are broad-based and are composed of securities having significant trading volumes and market capitalization, improper trading practices in the Shares and the ability to use the Shares to manipulate the underlying securities will be limited. Moreover, the issuers of the securities comprising the Underlying Indexes are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets, and thus subject to real-time transaction reporting, which should further deter manipulation.

B. Dissemination of Information About the Shares

In approving the Funds for trading on the Amex, the Commission notes that the Underlying Indexes are broad-based, widely-disseminated indexes, which underlie numerous listed products. These index values are widely-disseminated on a real-time basis at least every 15 seconds throughout the trading day during the period in which

[30] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

[31] 15 U.S.C. 78f(b).

[32] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the Shares will trade on Amex. Additionally, the Commission notes that the Exchange will disseminate through the facilities of CTA at least every 15 seconds a calculation of the IIV, along with an updated market value of the Shares. Comparing these two figures will help investors to determine whether, and to what extent, the Shares may be selling at a premium or discount to NAV and thus will facilitate arbitrage of the Shares in relation to the Index component securities.

The Commission also notes that the Trust's or Advisor's Web site and/or that of the Exchange, which is and will be publicly accessible at no charge, will contain the Shares' prior business day NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV.

The Funds' total portfolio composition will be disclosed to all market participants at the same time on the Web site of the Trust (*http://www.profunds.com*) and/or the Exchange (*http://www.amex.com*). The Commission believes that such disclosure is reasonably designed to facilitate a functional arbitrage mechanism and mitigate the risks of improper market activity that could arise from inconsistent disclosure of information.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the Shares are consistent with the Act. Shares will trade as equity securities subject to Amex rules including, among others, rules governing trading halts, specialist activities, stop and stop limit orders, prospectus delivery, and customer suitability requirements. In addition, the Shares will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Exchange. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the information circular the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares.

IV. Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving the proposed Amendment No. 4 before the thirtieth day of publication of notice of filing thereof in the **Federal Register**. The Amex filed Amendment No. 4 to clarify the proposed rule text. Specifically, Amendment No. 4 makes clear that, as part of the creation and redemption process, APs will deposit or receive only stocks and/or cash. The Commission believes that Amex's proposed changes in Amendment No. 4 clarify the proposed rule change, raise no new regulatory issues and are consistent with the Act. Based on the above, the Commission finds good cause for accelerating approval of Amendment No. 4.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether the amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2004–62. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–62 and should be submitted on or before November 1, 2005.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change, as amended, (SR–Amex–2004–62) is approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5563 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52555, File No. SR–MSRB–2005–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to MSRB Rule G–20, on Gifts and Gratuities, and MSRB Rule G–8, on Recordkeeping

October 3, 2005.

On January 13, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Rule G–20, on gifts and gratuities, and the related recordkeeping requirements of Rule G–8. The proposed rule change was published for comment in the **Federal Register** on August 24, 2005.[3] The Commission received one comment letter regarding the proposal.[4] On September 26, 2005, the MSRB filed a

[33] 15 U.S.C. 78s(b)(2).

[34] 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. 52290 (August 18, 2005), 70 FR 49696 (August 24, 2005) (the "Commission's Notice").

[4] *See* letter to Jonathan G. Katz, Secretary, Commission, from Robert J. Stracks, Counsel to Griffin, Kubik, Stephens & Thompson, Inc. ("Griffin, Kubik"), dated September 13, 2005 ("Griffin, Kubik's Letter").

response to the comment letter from Griffin, Kubik.[5] This order approves the proposed rule change.

The proposed rule change would more fully conform Rule G–20 to NASD requirements relating to gifts and gratuities, and add new provisions governing non-cash compensation and sales incentives in connection with municipal fund securities and other primary offerings of municipal securities, based on NASD requirements for non-cash compensation and sales incentives. A full description of the proposal is contained in the Commission's Notice.

Griffin, Kubik stated in its comment letter that they agree with the MSRB that the regulation of gifts and gratuities ought to be consistent across those regulators governing the conduct of broker-dealers. Nonetheless, Griffin, Kubik's Letter states that they believe that adoption of any changes to Rule G–20 is premature because they understand that the NASD, the New York Stock Exchange, Inc. ("NYSE") and other regulators are currently considering the question of appropriate rules and standards for gifts and because the status of the NASD's current rule and interpretation is less than clear. The Commission's Notice noted that the NYSE has a pending rule filing with the Commission on gifts and gratuities that is currently being reviewed, and that the MSRB has agreed to consider filing further amendments to Rule G–20 or other rules, as necessary, to make its rules on gifts and gratuities consistent with future rule changes made by other self-regulatory organizations (SROs) overseen by the Commission.

The MSRB's Response Letter stated that the MSRB determined that provisions comparable to current NASD requirements governing gifts and gratuities and the payment of non-cash compensation are appropriate for dealers effecting transactions in municipal securities. The MSRB's Response Letter also stated that, as the commentator noted, the MSRB has undertaken to make its rules on gifts and gratuities consistent with other self-regulatory organizations where appropriate for the municipal securities market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[6] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.[7] Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[8] In particular, the Commission finds that the proposed rule change is consistent with the Act because it will provide for more consistent treatment across the securities markets regarding gifts, gratuities, non-cash compensation and sales incentives, thereby facilitating dealer understanding of, and compliance with, these requirements.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] that the proposed rule change (SR–MSRB–2005–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5545 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* letter from Jill C. Finder, Assistant General Counsel, MSRB, to Martha M. Haines, Chief, Office of Municipal Securities, Commission, dated September 22, 2005 ("MSRB's Response Letter").

[6] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–4(b)(2)(C).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52547; File No. SR–NASD–2005–110]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 6 Examination Program

September 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon 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

NASD is filing revisions to the study outline and selection specifications for the Limited Representative—Investment Company and Variable Contracts Products (Series 6) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination, as well as modify the content of the examination program to track more closely the functional workflow of a Series 6 limited representative. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available on NASD's Web site (*http://www.nasd.com*), at NASD, and at the Commission.[6] However, NASD has omitted the Series 6 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 6 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2005–110 for immediate effectiveness pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission, dated July 24, 2000. The question bank is available for Commission review.

[6] Telephone conversation between Mia Zur, Attorney, Jan Woo, Attorney, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated September 23, 2005.

[7] 17 CFR 240.24b–2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 15A(g)(3) of the Act,[8] which requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 6 examination qualifies persons seeking registration with NASD as investment company and variable contracts products limited representatives. NASD Rule 1032(b)[9] states that registered representatives in this limited category are permitted solely to engage in transactions involving redeemable securities of companies registered under the Investment Company Act of 1940 ("Investment Company Act"), securities of closed-end companies registered under the Investment Company Act during the period of original distribution only, and variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts that are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933.[10]

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 6 examination program. As a result of this review, NASD is proposing to update the study outline to cover Regulation S–P,[11] anti-money laundering rules, municipal fund securities (*e.g.*, 529 college savings plans), Regulation D,[12] and exchange-traded funds. In addition, as part of an ongoing effort to align the examination more closely to the functions of a Series 6 limited representative, NASD is proposing to modify the content of the study outline to track the functional workflow of a Series 6 representative. NASD also is proposing to increase the number of sections covered by the Series 6 outline from four to six. Finally, NASD is proposing to modify the section headings and the number of questions on each section of the outline as follows: Section 1, Securities Markets, Investment Securities, and Economic Factors, 8 questions; Section 2, Securities and Tax Regulations, 23 questions; Section 3, Marketing, Prospecting, and Sales Presentations, 18 questions; Section 4, Evaluation of Customers, 13 questions; Section 5, Product Information: Investment Company Securities and Variable Contracts, 26 questions; and Section 6, Opening and Servicing Customer Accounts, 12 questions.

NASD is proposing these changes to the entire content of the Series 6 examination, including the selection specifications and question bank. The number of questions on the Series 6 examination will remain at 100, and candidates will continue to have 2 hours and 15 minutes to complete the exam. Also, each question will continue to count as one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 6 examination program are consistent with the provisions of Sections 15A(b)(6)[13] and 15A(g)(3) of the Act,[14] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[15] and Rule 19b–4(f)(1) thereunder,[16] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 6 examination program no later than November 30, 2005. NASD will announce the implementation date in a Notice to Members to be published no later than 60 days after Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–110. This file

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] Telephone conversation between Katherine England, Assistant Director, Mia Zur, Attorney, Jan Woo, Attorney, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated September 23, 2005.

[10] 15 U.S.C. 77c(a)(8).

[11] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

[12] 17 CFR 230.501–230.508.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78*o*–3(g)(3).

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(1).

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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–110 and should be submitted on or before November 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5561 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52546; File No. SR–NASD–2005–109]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 4 Examination Program

September 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon 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

NASD is filing revisions to the study outline and selection specifications for the Limited Principal—Registered Options (Series 4) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination, as well as modify the content of the examination program to track more closely the functional workflow of a Series 4 limited principal. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD. The revisions that NASD is submitting with this filing supersede all prior revisions to the Series 4 examination program submitted by NASD.

The revised study outline is available on NASD's Web site (*http://www.nasd.com*), at NASD, and at the Commission.[6] However, NASD has omitted the Series 4 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 15A(g)(3) of the Act,[8] which requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations ("SROs"), that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NASD Rule 1022(f) states that member firms engaged in, or intending to engage in, transactions in security futures or put or call options with the public must have at least one Registered Options and Security Futures Principal. In addition, every individual engaged in the management of the day-to-day options or security futures activities of a firm must be registered as a Registered Options and Security Futures Principal. The Series 4 examination, an industry-wide examination, qualifies an individual to function as a Registered Options and Security Futures Principal, but only for purposes of supervising a member firm's options activities.[9] The Series 4 examination tests a candidate's knowledge of options trading generally, the industry rules applicable to trading of option contracts, and the rules of registered clearing agencies for options. The Series 4 examination covers, among

[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)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 4 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2005–109 for immediate effectiveness pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission, dated July 24, 2000. The question bank is available for Commission review.

[6] Telephone conversation between Mia Zur, Attorney, Jan Woo, Attorney, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated September 23, 2005.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] A Registered Options and Security Futures Principal also must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities.

other things, equity options, foreign currency options, index options, and options on government and mortgage-backed securities.

The Series 4 examination program is shared by NASD and the following SROs: The American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

A committee of industry representatives, together with the staff of NASD and the SROs, recently undertook a periodic review of the Series 4 examination program. As a result of this review and as part of an ongoing effort to align the examination more closely to the supervisory duties of a Series 4 limited principal, NASD is proposing to modify the content of the examination to track the functional workflow of a Series 4 limited principal. More specifically, NASD is proposing to revise the main section headings and the number of questions on each section of the Series 4 study outline as follows: Options Investment Strategies, decreased from 35 to 34 questions; Supervision of Sales Activities and Trading Practices, increased from 71 to 75 questions; and Supervision of Employees, Business Conduct, and Recordkeeping and Reporting Requirements, decreased from 19 to 16 questions. NASD is further proposing revisions to the study outline to reflect the SEC short sale requirements. The revised examination continues to cover the areas of knowledge required to supervise options activities.

NASD proposes these changes to the entire content of the Series 4 examination, including the selection specifications and question bank. The number of questions on the Series 4 examination will remain at 125, and candidates will continue to have three hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

On February 9, 2005, NASD filed with the SEC for immediate effectiveness similar revisions to the Series 4 examination program.[10] NASD originally proposed to implement the Series 4 examination program revisions no later than April 29, 2005. However, due to administrative issues, NASD delayed until no later than November 30, 2005 the implementation date of the revisions.[11] In the interim, the SROs that share the Series 4 examination program recommended additional revisions to the examination program. These additional revisions are reflected in the examination material that NASD is submitting with this filing. NASD understands that the other SROs also will file with the Commission similar proposed rule changes reflecting the revisions to the Series 4 examination program. NASD continues to propose to implement the revised Series 4 examination program no later than November 30, 2005.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 4 examination program are consistent with the provisions of Sections 15A(b)(6)[12] and 15A(g)(3) of the Act,[13] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[14] and Rule 19b–4(f)(1) thereunder,[15] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 4 examination program no later than November 30, 2005. NASD will announce the implementation date in a Notice to Members to be published no later than 60 days after Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–109. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[10] *See* Securities Exchange Act Release No. 51216 (February 16, 2005), 70 FR 8866 (February 23, 2005) (relating to revisions to the Series 4 examination program) (SR–NASD–2005–025).

[11] *See* Securities Exchange Act Release No. 51688 (May 12, 2005), 70 FR 28970 (May 19, 2005) (to delay implementation date of revisions to the Series 4 examination program) (SR–NASD–2005–053).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78*o*–3(g)(3).

[14] 15 U.S.C. 78s(b)(3)(A)(i).

[15] 17 CFR 240.19b–4(f)(1).

Number SR–NASD–2005–109 and should be submitted on or before November 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5562 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52548; File No. SR–NASD–2005–111]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 9/10 Examination Program

September 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon 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

NASD is filing revisions to the study outline and selection specifications for the Limited Principal—General Securities Sales Supervisor (Series 9/10) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination, as well as modify the content of the examination program to track more closely the functional workflow of a Series 9/10 limited principal. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available on NASD's Web site (*http://www.nasd.com*), at NASD, and at the Commission.[6] However, NASD has omitted the Series 9/10 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 15A(g)(3) of the Act,[8] which requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations ("SROs"), that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NASD Rule 1022(g) states that member firms may register with NASD an individual as a General Securities Sales Supervisor if the individual's supervisory responsibilities in the investment banking and securities business are limited to the securities sales activities of a member, including the training of sales and sales supervisory personnel and the maintenance of records of original entry and/or ledger accounts of the member required to be maintained in branch offices by SEC recordkeeping rules. A General Securities Sales Supervisor is precluded from performing any of the following activities: supervision of the origination and structuring of underwritings; supervision of market making commitments; final approval of advertisements as these are defined in NASD Rule 2210; supervision of the custody of firm or customer funds and/or securities for purposes of Rule 15c3–3[9] under the Act; or supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Act. The Series 9/10 examination, an industry-wide examination, qualifies an individual to function as a General Securities Sales Supervisor. The Series 9/10 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions pertinent to the supervision of sales activities.

The Series 9/10 examination program is shared by NASD and the following SROs: the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the Municipal Securities Rule Making Board, the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

A committee of industry representatives, together with the staff of NASD and the SROs, recently undertook a periodic review of the Series 9/10 examination program. As a result of this review, NASD is proposing to update the content of the examination to cover Regulation S–P,[10] MSRB Rules G–37/G–38, SRO research analyst and anti-money laundering rules, municipal fund securities (*e.g.*, 529 college savings plans), and exchange traded funds. NASD is further proposing revisions to the study outline to reflect the SEC short sale requirements. In addition, as part of an ongoing effort to align the

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 9/10 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2005–111 for immediate effectiveness pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. See letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission, dated July 24, 2000. The question bank is available for Commission review.

[6] Telephone conversation between Mia Zur, Attorney, Jan Woo, Attorney, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated September 23, 2005.

[7] 17 CFR 240.24b–2.

[8] U.S.C. 78*o*–3(g)(3).

[9] 17 CFR 240.15c3–3.

[10] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

examination more closely to the supervisory duties of a Series 9/10 limited principal, NASD is proposing to modify the content of the examination to track the functional workflow of a Series 9/10 limited principal. Also, NASD is proposing to include questions related to parallel rules of NASD, the options exchanges, the MSRB, and the NYSE in the same section of the exam.

As a result of the revisions, NASD is proposing to modify the main section headings and the number of questions on each section of the Series 9/10 study outline as follows: Section 1—Hiring, Qualifications, and Continuing Education, 9 questions; Section 2—Supervision of Accounts and Sales Activities, 94 questions; Section 3—Conduct of Associated Persons, 14 questions; Section 4—Recordkeeping Requirements, 8 questions; Section 5—Municipal Securities Regulation, 20 questions; Section 6—Options Regulation, 55 questions. Sections 1 through 5 constitute the Series 10 portion of the examination. Section 6 constitutes the Series 9 portion of the examination. Series 10 covers general securities and municipal securities, and Series 9 covers options. The revised examination continues to cover the areas of knowledge required for the supervision of sales activities.

NASD is proposing these changes to the entire content of the Series 9/10 examination, including the selection specifications and question bank. The number of questions on the Series 9/10 examination will remain at 200, and candidates will continue to have four hours to complete the Series 10 portion and one and one-half hours to complete the Series 9 portion. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions on each series, 9 and 10, to receive a passing grade.

NASD understands that the other SROs also will file with the Commission similar proposed rule changes reflecting the revisions to the Series 9/10 examination program.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 9/10 examination program are consistent with the provisions of Sections 15A(b)(6)[11] and 15A(g)(3) of the Act,[12] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[13] and Rule 19b-4(f)(1) thereunder,[14] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 9/10 examination program no later than November 30, 2005. NASD will announce the implementation date in a Notice to Members to be published no later than 60 days after Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–111. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–111 and should be submitted on or before November 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5565 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(g)(3).

[13] 15 U.S.C. 78s(b)(3)(A)(i).

[14] 17 CFR 240.19b–4(f)(1).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52552; File No. SR–NSCC–2005–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify and Consolidate Clearing Fund Rules

October 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 20, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and

[1] 15 U.S.C. 78s(b)(1).

Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to modify Procedure XV (Clearing Fund Formula and Other Matters) and make related technical changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Clearing Fund Formula Enhancements

NSCC's clearing fund formula consists of a number of components designed to calculate the exposure to NSCC of participants' unsettled portfolios. For CNS and Balance Order transactions, the components include a mark-to-market calculation and a volatility calculation.[3]

The current mark-to-market calculation includes trades that have not yet reached Settlement Date, thus excluding from the calculation trades that have reached T+3 and CNS fail positions (*i.e.*, net positions that did not settle on Settlement Date). NSCC is proposing to enhance the mark-to-market calculation by including trades that have reached Settlement Date and net CNS fail positions to more accurately cover the mark-to-market exposure of participants' unsettled portfolios in the event of an intraday insolvency of a participant. When making this calculation, NSCC may but is not required to take into account securities that a participant has delivered to CNS in the night cycle.

The volatility component of the clearing fund formula rule provides that NSCC may exclude from volatility calculations net unsettled positions in classes of securities whose volatility is either less amenable to statistical analysis such as OTC Pink Sheet issues trading below $5.00, or amenable to such analysis only in a complex manner such as municipal or corporate bonds. The amount of clearing fund required to satisfy the volatility component for these positions is determined as a percentage haircut (currently 2% for municipal and corporate bonds).

NSCC is proposing to enhance its volatility formula and replace the 2% haircut for corporate and municipal bonds with a fixed income volatility calculation. NSCC would continue to use a haircut for fixed income securities in circumstances it deems appropriate such as where sufficient market or security information is not available.

2. Technical Clarifications

When NSCC revised its clearing fund formula in 2001 to move to a risk-based calculation,[4] it applied the revised formula to participants on a rolling basis. To accommodate this transition, NSCC's rules retained two versions of Addendum B (Standards of Financial Responsibility and Operational Capability) and Procedure XV: Version 1 (non-risk-based) and Version 2 (risk-based). Version 2 is currently located in Appendix 1.

With limited exception, all participants are now subject to the clearing fund provisions of Version 2 of Procedure XV and Version 2 of Addendum B. Accordingly, in order to simplify the rules and enable participants to locate provisions applicable to them more readily, NSCC proposes to restructure its Addendums, Procedures, and Rules.

As Version 1 of Procedure XV now has limited applicability, NSCC is proposing to re-designate this as proposed Version 2 of Procedure XV and move it to Appendix 1. NSCC would retain only those provisions thereof (and of Version 1 of Addendum B[5]) that remain applicable. Because the current Version I of Procedure XV always contained a mark-to-market component, it is also being revised to include in the mark-to-market calculation trades that have reached T+3 and CNS fail positions. The current provisions of Appendix 1 (Version 2 of Procedure XV and Version 2 of Addendum B) would be moved into the body of the rules in place of current Version 1 of Procedure XV and current Version 1 of Addendum B where they would appear in numerical order.

As part of these clarifications, Rule 4 (Clearing Fund) is also being corrected to make clear that participants may request a return of any excess clearing fund on any day that NSCC has determined that the participant's Actual Deposit exceeds its Required Deposit (qualifying bonds would still be valued at their collateral value). Finally, certain technical corrections are proposed to Rule 4 and the clearing fund formula to provide consistent terminology and delete obsolete references.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to NSCC because it will permit NSCC to assure the safeguarding of funds and securities which are in its custody or control or for which it is responsible by allowing NSCC to more precisely identify the risks posed by a participant's unsettled portfolio and, as a result, more quickly adjust and collect additional clearing fund requirements than the current formula. As a result NSCC should be better protected from the possibility of a participant's default because the clearing fund deposits it collects should more accurately reflect NSCC's exposure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NSCC has not solicited or received any written comments on this proposal. NSCC will notify the Commission of any written comments it receives.

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The other components for CNS and Balance Order activity are a CNS fail charge, a charge for market maker domination, and special charges.

[4] Securities Exchange Act Release No. 44431 (June 15, 2001), 66 FR 33280.

[5] Both versions of Addendum B are substantially identical, with the exception of certain provisions of current Version 1 relating to the timing for calculating and collecting clearing fund. The substance of those provisions of current Version 1 of Addendum B are added as a note to the current Version 1 of Procedure XV that would be moved to Appendix 1 and would be renamed Version 2. The rest of Version 1 of Addendum B would be deleted. All participants remain subject to the provisions of the current Version 2 of Addendum B, which NSCC is proposing to move to the body of its rules from Appendix 1 and rename Version 1.

[6] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2005–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NSCC–2005–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal*. 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–NSCC–2005–13 and should be submitted on or before November 1, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5564 Filed 10–7–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5203]

In the Matter of the Designation of the Moroccan Islamic Combatant Group, aka Groupe Islamique Combattant Marocain (GICM), as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189, hereinafter "INA"), exist with respect to the Moroccan Islamic Combatant Group, aka Groupe Islamique Combattant Marocain (GICM).

Therefore, effective upon date of publication in the **Federal Register**, the Secretary of State hereby designates that organization as a foreign terrorist organization pursuant to section 219(a) of the INA.

Dated: October 3, 2005.

Henry A. Crumpton,

Coordinator for Counterterrorism, Department of State.

[FR Doc. 05–20341 Filed 10–7–05; 5:00 pm]

BILLING CODE 4710–10–P

[7] CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Maxjet Airways, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2005–9–26) [Docket OST–2004–17171].

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding MAXjet Airways, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than October 14, 2005.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–2004–17171 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Balgobin, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: September 30, 2005.

William. Bertram,

Chief, Air Carrier Fitness Division.

[FR Doc. 05–20332 Filed 10–7–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, Department of Transportation (DOT)

ACTION: Notice to modify a system of records.

SUMMARY: DOT proposes to modify an existing system of records under the Privacy Act of 1974.

EFFECTIVE DATE: This notice will be effective, without further notice, on November 21, 2005, unless modified by a subsequent notice to incorporate comments received by the public. Comments must be received by November 10, 2005 to be assured consideration.

ADDRESSES: Send comments to Steven Lott, Departmental Privacy Officer, United States Department of Transportation, Office of the Secretary, 400 7th Street, SW., Room 6106, Washington DC 20590 or *Steven.Lott@dot.gov*.

FOR FURTHER INFORMATION CONTACT: Craig H. Middlebrook, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, 202–366–0105 (voice), 202–366–7147 (fax), *craig.middlebrook@sls.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Chief Counsel operates a Federal Tort Claims Act handling system to evaluate claims. This system of records which is used primarily to determine allowability of claims, contains personal information about individuals. The following information may be contained in the system: name, address, age and marital status of claimants and details of claims, documented evidence relevant to the claims provided by claimants, and relevant, internal Corporation investigation documents.

SYSTEM NUMBER:

DOT/SLS 151.

SYSTEM NAME:

Claimants Under Federal Tort Claims Act.

SECURITY CLASSIFICATION:

Sensitive, unclassified.

SYSTEM LOCATION:

This system of record is in the Office of the Chief Counsel for the Saint Lawrence Seaway Development Corporation, 400 7th Street, SW., Room 5424, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

This system contains information on all individuals presenting claims for damages to personal property, or personal injuries, or death resulting in connection with Corporation activities, other than claims by Federal Government employees under Federal Employees' Compensation Act (5 U.S.C. 8102).

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of claims documents on which are recorded name, address, age and marital status of claimants and details of claims, documented evidence relevant to the claims provided by claimants, and relevant, internal Corporation investigation documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 2675 and 33 U.S.C. 5984(a)(4).

PURPOSES:

Information will be used in evaluating claims, categories of users and the purposes of such uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Chief Counsel and other Federal government officials to determine allowability of claims.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Documents are stored as paper records in file folders stored in file cabinets.

RETRIEVABILITY:

Records are retrievable by claimant's name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible only to the Chief Counsel and persons authorized by him.

RETENTION AND DISPOSAL:

Records are stored for an indefinite period of time.

SYSTEM MANAGER AND ADDRESS:

Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager."

RECORD ACCESS PROCEDURES:

Same as "System Manager."

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the Director, Office of Finance and Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, NY 13662–0520.

RECORD SOURCE CATEGORIES:

Information is obtained directly from claimants on Standard Form 95 and supporting documentation provided by claimants and relevant, internal Corporation investigation documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: Septembe 28, 2005.

Steven Lott,

Departmental Privacy Officer.

[FR Doc. 05–20333 Filed 10–7–05; 8:45 am]

BILLING CODE 4910–62–P 1

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2005 22652]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 12, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Christensen, Maritime Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone: 202–366–5909; FAX: 202–493–2180; or e-mail: *tom.christensen@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Effective U.S. Control (EUSC)/Parent Company.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0511.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Effective U.S. Control (EUSC)/Parent Company collection consists of an inventory of foreign-registered vessels owned by U.S. citizens. Specifically, the collection consists of responses from vessel owners verifying or correcting vessel ownership data and characteristics found in commercial publications. The information obtained could be vital in a national or international emergency and is essential to the logistical support planning operations conducted by MARAD officials.

Need and Use of the Information: The information is used in contingency planning and provides data related to potential sealift capacity to support movement of fuel and military equipment to crisis zones.

Description of Respondents: U.S. citizens who own foreign-registered vessels.

Annual Responses: 80 responses.

Annual Burden: 40 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street Southwest, Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority: 49 CFR 1.66.).

Dated: October 4, 2005.

By Order of the Maritime Administrator,

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–20359 Filed 10–7–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2005 22651]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Indigo Star.*

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22651 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 10, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22651. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Snow Goose* is:

Intended Use: "Sightseeing, educational, and other charters involving the conveyance of paying passengers."

Geographic Region: Great Lakes, Mississippi River, its tributaries, and all rivers and their tributaries east of the Mississippi River, harbors and other inland waterways east of the Mississippi River, and the coastal, intercoastal canals and near coastal waters of the East Coast (Atlantic Ocean) and Gulf Coast (Gulf of Mexico).

Dated: October 4, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–20358 Filed 10–7–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–22118; Notice 2]

Eaton Aeroquip, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Eaton Aeroquip, Inc. (Eaton) has determined that the end fittings that it produced for nylon air brake hoses do not comply with S7.2.2(d) of 49 CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, "Brake hoses." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Eaton has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on August 25, 2005, in the **Federal Register** (70 FR 49972). NHTSA received no comments.

Affected are a total of approximately 7,784,614 end fittings produced from 2001 to June 30, 2005, plus an indeterminate number of end fittings produced prior to 2001 for which records are not available (Eaton acquired the end fitting manufacturing business on November 1, 2002). S7.2.2(d) of FMVSS No. 106 requires that each fitting shall be etched, embossed, or stamped with

> (d) The * * * outside diameter of the plastic tubing to which the fitting is properly attached expressed in inches or fractions of inches or in millimeters followed by the letters OD * * *.

The subject end fittings are missing the letters OD from their labels.

Eaton believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Eaton states that the purpose of the letters OD on the label is to indicate that the measurement refers to the outside

diameter of a plastic tube as opposed to the inside diameter. Eaton points out that if the end user was to assume that the measurement referred to the inside diameter because of the absence of the letters OD, it "would be physically impossible, for example, to insert a ½ inch inside diameter hose into an end fitting made for ½ inch outside diameter plastic tubing." According to Eaton, "if an end-user were to mistakenly attempt to use the mislabeled end fittings with a hose, instead of plastic tubing, the incompatibility would be obvious because the diameters would not match." Eaton states that therefore, "there is no potential that the mislabeled end fittings could be used improperly, and there could be no resulting issue of motor vehicle safety."

NHTSA agrees with Eaton that the noncompliance is inconsequential to motor vehicle safety. Should someone mistakenly assume the outside diameter size marking was an inside diameter size marking, it would be physically impossible to mismatch the hose and the end fitting. Therefore a safety issue would not arise from this noncompliance. Eaton has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Eaton's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: October 4, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–20356 Filed 10–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34763]

The Columbus & Ohio River Rail Road Company—Trackage Rights Exemption—Ohio Rail Development Commission and Ohi-Rail Corporation

Ohi-Rail Corporation (ORC), a Class III rail carrier, and the Ohio Rail Development Commission (ORDC)[1] have agreed to grant nonexclusive trackage rights to The Columbus & Ohio River Rail Road Company (CUOH),[2] a Class III rail carrier, over a portion of a line of railroad known as the Piney Fork Line, between approximately milepost 74.0 at the Pan Interchange, near Hopedale, OH, where it connects with CUOH's line, and approximately milepost 66.1 at the point 2 miles north of the Apex Landfill switch, a distance of approximately 7.9 miles.[3] The transaction was scheduled to be consummated on or about October 1, 2005.

The purpose of the trackage rights is to permit CUOH to provide rail service to the Apex Landfill in Springfield Township, Jefferson County, OH, via its east-west line between Bowerston and Mingo Junction, OH.

This notice is filed under 49 CFR 1180.2(d)(7). If it 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.

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 section 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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34763, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Andrew B. Kolesar III, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 3, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20246 Filed 10–7–05; 8:45 am]

BILLING CODE 4915–01–P

[1] ORC operates the involved line, which is owned by ORDC, an independent commission within the Ohio Department of Transportation.

[2] CUOH is a wholly owned subsidiary of Summit View, Inc., a noncarrier holding company.

[3] The Piney Fork Line extends between approximately milepost 43.5 in Minerva, OH, on the north, and approximately milepost 77.7 in Hopedale, OH, on the south.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 4, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 10, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1028.

Type of Review: Extension.

Title: INTL–941–86 (NPRM) and INTL–655–87 (Temporary) Passive Foreign Investment Companies.

Description: These regulations specify how U.S. persons who are shareholders of Passive Foreign Investment Companies (PFIC's) make elections with respect to their PFIC stock.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 112,500 hours.

OMB Number: 1545–1209.

Type of Review: Extension.

Title: IA–83–90 (Final) Disclosure of Tax Return Information for Purposes of Quality or Peer Review; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

Description: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews and disclosure that are necessary because of the tax return preparer's death or incapacity.

Respondents: Business or other for profit.

Estimated Total Burden Hours: 250,000 hours.

OMB Number: 1545–1421.

Type of Review: Extension.

Title: IA–62–93 (Final) Certain Elections under the Omnibus Budget Reconciliation Act of 1933.

Description: These regulations establish various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (Act). The regulations provide

guidance that enable taxpayers to take advantage of various benefits provided by the Act and the Internal Revenue Code.

Respondents: Business or other for-profit, and Individuals or households and farms.

Estimated Total Burden Hours: 202,500 hours.

OMB Number: 1545–1661.

Type of Review: Extension.

Title: REG–10610–98 (Final) Qualified Lessee Construction Allowances for Short-Term Leases.

Description: The regulation provide guidance with respect to section 110, which provides a safe harbor whereby it will be assumed that a construction allowance provided by a lessor to be a lessee is used to construct or improve lessor property when long-term property is constructed or improved and pursuant to a short-term lease. The regulations also provide a reporting requirement that ensures that both the lessee and the lessor consistently treat the property subject to the construction allowance as nonresidential real property owned by the lessor.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–1662.

Type of Review: Extension.

Title: REG–121063–97 (Final) Averaging of Farm Income.

Description: Code section 1301 allows an individual engaged in a farming business to elect to reduce his or her regular tax liability by treating all or a portion of the current year's farming income as if it had been earned in equal proportions over the prior three years. The regulation provides that the election for averaging farm income is made by filling Schedule J of Form 1040, which is also used to record and total the amount of tax for each year of the four year calculation.

Respondents: Individuals or household and Farms.

Estimated Total Burden Hours: 1 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–20335 Filed 10–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's continued eligibility for educational benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 12, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0178" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Form 22–6553d and VA Form 22–6553d–1.

OMB Control Number: OMB Control No. 2900–0178.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants receiving on the job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued, unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. The regional processing office uses VA Form 22–6553d–1 when the computer-generated version of the form is not available. VA uses the data to properly process the claimant's educational claim or to monitor his or her progress during training.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 15,750 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 10,500.

Number of Responses Annually: 94,500.

Dated: October 6, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5567 Filed 10–7–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 70, No. 195
Tuesday, October 11, 2005

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 TRANSPORTATION

Federal Aviation Administration

State Court Decision Affecting Recordation of Artisan Liens

Correction

In notice document 05–17835 appearing on page 53707 in the issue of Friday, September 9, 2005, make the following correction:

In the first column, under **SUMMARY**, in the fourth line "Creation Aviation, Inc." should read "Creston Aviation, Inc.".

[FR Doc. C5–17835 Filed 10–7–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

[Docket No. PHMSA–2005–22071 (HM–189Y)]

RIN 2137–AE08

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

Correction

In rule document 05–18983 beginning on page 56084 in the issue of Friday, September 23, 2005, make the following correction:

§172.101 [Corrected]

On page 56096, in the table, in §172.101, under the column titled "Symbols", in the last entry, the "+" symbol should be removed.

[FR Doc. C5–18983 Filed 10–7–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 11, 2005

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedure for Residential Central Air Conditioners and Heat Pumps; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–97–440]

RIN 1904–AA46

Energy Conservation Program for Consumer Products: Test Procedure for Residential Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE, or the Department) amends its test procedures for residential central air conditioners and heat pumps. This final rule adds new sections and revises several sections of the test procedure to bring it up-to-date by eliminating the need for several test procedure waivers and making it more complete. The Department also re-organized the test procedure to be more chronological in its progression. The revisions to the test procedure do not alter the minimum energy conservation standards currently in effect for central air conditioners and heat pumps.

DATES: This rule is effective April 10, 2006. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 10, 2006.

ADDRESSES: You may review copies of all materials related to this rulemaking at 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: Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611, e-mail: *michael.raymond@ee.doe.gov*; or Thomas B. DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507, e-mail: *thomas.depriest@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The final rule incorporates, by reference, into Subpart B of Part 430 seven test-method standards published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), as follows:

- Standard 23–1993, "Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units;"
- Standard 37–1988, "Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment;"
- Standard 41.1–1986 (Reaffirmed 2001), "Standard Method for Temperature Measurement;"
- Standard 41.2–1987 (Reaffirmed 1992), "Standard Methods for Laboratory Airflow Measurement;"
- Standard 41.6–1994 (Reaffirmed 2001), "Standard Method for Measurement of Moist Air Properties;"
- Standard 41.9–2000, "Calorimeter Test Methods for Mass Flow Measurements of Volatile Refrigerants;" and
- Standard 116–1995, "Methods of Testing for Rating for Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps."

The following joint test-method standard of ASHRAE and the Air Movement and Control Association International, Inc. (ASHRAE/AMCA) is incorporated by reference into subpart B of Part 430:

- Standard 51–1999/210–1999, "Laboratory Methods of Testing Fans for Aerodynamic Performance Rating."

The following test-and-rating standard of the Air-Conditioning and Refrigeration Institute (ARI) is incorporated by reference into Subpart B of Part 430:

- Standard 210/240–2003, "Unitary Air-Conditioning and Air-Source Heat Pump Equipment."

Copies of these standards are available for public review at the Department of Energy's Building Technologies Program Resource Room described above. Copies of the ASHRAE, ASHRAE/AMCA and ARI Standards are available from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE., Atlanta, GA 30329, *http://www.ashrae.org*; the Air Movement and Control Association International, Inc., 30 West University Drive, Arlington Heights, IL 60004–1893, *http://www.amca.org*; and the Air-Conditioning and Refrigeration Institute, 4100 North Fairfax Drive, Suite 200, Arlington, VA 22203–1629, *http://www.ari.org*.

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA or Act) (42 U.S.C. 6291 *et seq.*), established the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program ("covered products") include central air conditioners and heat pumps, the subject of today's final rule.

Under the Act, the Program consists of three parts: Testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), is authorized to establish or amend test procedures as appropriate for each of the covered products. (42 U.S.C. 6293) The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative, average use cycle or period of use. The test procedure must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If a test procedure is amended, DOE is required to determine to what extent, if any, the proposed new test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that an amended test procedure would alter the measured energy efficiency of a covered product, DOE is required to amend the applicable energy conservation standard with respect to such test procedure. In determining any such amended energy conservation standard, DOE is required to measure the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average efficiency or energy use of these representative samples, tested using the amended test procedure, constitutes the amended standard. (42 U.S.C. 6293(e)(2)) The Department has determined that today's amended test procedure does not alter the measured efficiency or measured energy use of central air conditioners and heat pumps.

Beginning 180 days after a test procedure for a covered product is prescribed, no manufacturer, distributor, retailer, or private labeler may make representations with respect to the energy use, efficiency, or cost of energy consumed by such product, except as reflected in tests conducted according to the DOE procedure. (42 U.S.C. 6293(c)(2))

B. Background

On January 22, 2001, the Department published a Notice of Proposed Rulemaking (hereafter referred to as the January 22, 2001, proposed rule) that proposed a revised test procedure for central air conditioners and heat pumps. (66 FR 6768) As summarized in the January 22, 2001, proposed rule, the Department initiated several interactions, including a DOE workshop, phone conferences, and the release of multiple drafts for review and comment between DOE and stakeholders prior to preparing the revised test procedure.

Most of the existing test procedure dates back to its original publication in the **Federal Register** on December 27, 1979. (44 FR 76700) The Department modified the test procedure on March 14, 1988, to cover variable-speed air conditioners and heat pumps, to address testing of split-type non-ducted units, and to change the method used for crediting heat pumps that provide a demand defrost capability. (53 FR 8304)

The January 22, 2001, proposed rule specified dates for holding a public hearing and for submitting written comments. At the request of ARI, the Department changed these specified dates. (66 FR 15203, March 16, 2001) Prior to the public hearing and at the invitation of ARI, a NIST representative attended a meeting of the ARI Unitary Small Equipment Engineering Committee on February 27, 2001, at ARI headquarters. The public hearing was held on March 29, 2001, at DOE headquarters.[1] At the public hearing, the participants spent the majority of the time discussing the list of items from the proposed rulemaking for which the Department solicited stakeholder comment. One manufacturer, the Carrier Corporation, presented a prepared oral statement. On May 1, 2001, DOE and NIST personnel met with representatives of the Carrier Corporation at DOE headquarters.

During the comment period, stakeholders, DOE, and NIST held several phone and e-mail discussions about issues associated with the proposed test procedure (a revision of 10 CFR part 430, Subpart B, Appendix M) and about rating untested split-system combinations (a separate test procedure issue not covered in Appendix M, but in 10 CER 430.24(m)). The issue of rating untested split-system combinations is not part of this rulemaking and will be the subject of a future rulemaking.

II. Discussion of Comments

A. General Discussion

Nine different stakeholders submitted a total of fourteen comments on the January 22, 2001, proposed rule. Concurrent with this rulemaking, the Department also conducted a rulemaking to issue new energy conservation standards for central air conditioners and heat pumps. Both rulemakings covered, among other consumer products, small-duct, high-velocity (SDHV) systems. In the standards rulemaking (66 FR 7197), DOE stated that concerns for SDHV systems had been addressed by modifying the test procedure for SDHV products. This test procedure modification would have given SDHV systems a higher tested value of the Seasonal Energy Efficiency Ratio (SEER). (DOE later rejected this test procedure modification for reasons discussed in section II.A.2 of this preamble). As a result, the Department considered comments received on October 18, 2001, from SDHV manufacturers SpacePak and Unico, Inc. (Unico) as part of the energy conservation standards rulemaking in today's final rule on the test procedure.

[1] The Department held a public workshop on issues that would not be considered for the current revision to the test procedure (*i.e.*, alternative rating method for untested combinations, promoting devices that compensate for installation problems, metrification of the DOE test procedure) on the day immediately following the close of the public hearing.

(SpacePak, No. 21, Unico, No. 22)[2] The Department also considered during this rulemaking amended comments from ARI, dated October 30, 2001, that addressed the SDHV issue. (ARI, No. 20) A discussion of the comments and the actions taken in response to them follows.

1. Adopting References Updated Since Public Hearing

The January 22, 2001, proposed rule referenced seven ASHRAE standards, as well as ASHRAE Standard 51–99/AMCA Standard 210–99, and ARI standard 210/240. Since the publication of the proposed rule, however, two of these standards have been reaffirmed and two have been revised. The two reaffirmed standards are ASHRAE Standard 41.1–1986 (Reaffirmed 2001) and ASHRAE Standard 41.6–1994 (Reaffirmed 2001). When a standard is reaffirmed within ASHRAE, no substantive changes are permitted to the document. In the ASHRAE Project Committee Manual of Procedures, substantive change is defined as a change that involves an important (has value, weight or consequences), fundamental (is the foundation, without which it would collapse), or essential (belongs to the very nature of a thing) part or changes the meaning of the material or that directly and materially affects the use of the standard. Following are example changes that may be found substantive when examined in context;

- "shall" to "should" or "should" to "shall;"
- addition, deletion or revision of mandatory requirements, regardless of the number of changes;
- or addition of mandatory compliance with referenced standards.

Thus, today's final rule references ASHRAE Standards 41.1–1986 (Reaffirmed 2001) and 41.6–1994 (Reaffirmed 2001), whereas the January 22, 2001, proposed rule had referenced ASHRAE Standards 41.1–1986 (Reaffirmed 1991) and 41.6–1994. These changes have no effect on the test procedure itself nor on the reported energy efficiency ratings of the tested equipment.

The two revised standards are ASHRAE Standard 41.9–2000 and ARI Standard 210/240–2003. A revision of ASHRAE Standard 41.9, "Calorimeter Test Methods for Mass Flow Measurements of Volatile Refrigerants," was published in 2000. The previous version, Standard 41.9–1988, was referenced in the proposed rulemaking. This particular standard is only referenced in section 3.11.2 of the test procedure. Section 3.11.2 pertains to one of three allowed secondary test methods, the Compressor Calibration Method. These secondary test methods do not affect the reported performance ratings. Instead, these secondary test methods are used to provide a check of the primary method, *i.e.*, the Indoor Air Enthalpy Method. Specifically, the cooling or heating capacity determined using the approved primary method and the user selected secondary test method must agree within six percent to constitute a valid test set-up. The revised version of ASHRAE Standard 41.9 is referenced in today's test procedure both because it does not affect the reported ratings and because it provides the most current methods for making refrigerant calorimeter measurements.

The other revised standard is ARI Standard 210/240–2003. The main impetus behind the 2003 revision of ARI Standard 210/240 was a desire to narrow the scope of the equipment covered by the standard. Whereas the 1994 version of Standard 210/240 covered equipment up to 135,000 Btu/h, the 2003 version is limited to equipment having rated capacities less than 65,000 Btu/h. With regard to the DOE test procedure, the January 22, 2001, proposed rule referenced four sections within ARI Standard 210/240–1994. In the 2003 version of the standard, no substantive changes were made to these four sections. The numbering/lettering of the sections, however, did change slightly. For example, section 5.1.3.5 in the 1994 document became section 6.1.3.5 in the 2003 document. Today's test procedure maintains the approach taken in the proposed rule of only referencing the four particular sections of 210/240. Because of this consistency, the DOE test procedure is unaffected by referencing ARI Standard 210/240–2003 rather than Standard 210/240–1994. The reported energy efficiency ratings of the tested equipment are unaffected as well.

2. Small-Duct, High-Velocity (SDHV) Systems

As discussed in the January 22, 2001, proposed rule, Unico, a manufacturer of SDHV systems, argued for creating a separate SDHV product class that was subject to a lower future energy conservation standard than the level established for conventional units. (66 FR 6768) However, in the energy standards rulemaking, a majority of industry members opposed the separate-product-class option. DOE did not include a separate SDHV class in the January 22, 2001, proposed rule. Instead, DOE proposed testing SDHV systems as coil-only units. Testing as coil-only units would give SDHV units an immediate SEER and Heating Seasonal Performance Factor (HSPF) boost, as long as the default fan power was less than the actual blower wattage. The SEER and HSPF boost eliminated the need for a separate product class. Both Unico and ARI at first endorsed this approach. (Unico, No. 10; ARI, No. 19 at p. 3) But SpacePak, Trane, and ultimately ARI, disagreed with the coil-only testing approach. (SpacePak, No. 15; Trane, No. 12 at p. 1, ARI, No. 20) These comments noted that SDHV systems would be tested in a manner that would never occur in real applications and, as a result, give energy efficiency and cost-of-operation results that are not representative of the unit's true energy performance. Furthermore, SDHV manufacturers would have no incentive to use high-efficiency blowers if systems were tested without the indoor blower. Finally, there is no technical basis for setting the default fan-power level. For these reasons, DOE has determined that its proposal to test SDHV systems as coil-only units is unacceptable. As a result, today's final rule does not amend the test procedures to test SDHV systems as coil-only units.

DOE considered another alternative for SDHV systems which it also ultimately rejected. This alternative was to make no changes at all. In other words, test SDHV systems as they are currently tested and require them to meet the same future energy conservation standards as conventional units. The Department rejected this option because it risked the continued existence of SDHV systems. The Department explained its position at the public hearing on March 29, 2001: The Department cannot set standards in a way that removes from the market a product which offers special utility. (Public Hearing Tr., p. 44)

Because today's final rule does not amend the test procedures for SDHV units, DOE recognizes, as it did in the January 22, 2001, energy standards final rule, that SDHV units will have difficulty in meeting the 13 SEER standard. In the May 23, 2002, final rule on central air conditioner and heat pump standards, DOE further discussed how the special characteristics of SDHV systems would make it unlikely such systems could even meet the 12 SEER/7.4 HSPF standard established for space constrained products. (67 FR 36396) However, because of the ruling by the

[2] These comments were received in the course of the standards rulemaking, Docket Number EE–RM–98–440, but are relevant to this test procedure rulemaking. SpacePak's comments are item 267 in that docket; Unico's comments are item 251.

U.S. Court of Appeals for the Second Circuit in January, 2004, 355 F.3d 179 (2d Cir. 2004), that bars DOE from adopting a standard of less than 13 SEER for SDHV systems, the 13 SEER standard applies to SDHV systems, despite DOE's later conclusion that it is unlikely such systems can meet that standard or even the lower 12 SEER standard for space constrained systems. (69 FR 50997) Nonetheless, the inability of SDHV systems to meet the applicable energy efficiency standards is not a new problem created by the amendments to the test procedure in today's rulemaking. Instead, these products were unable to meet the standard under the old test procedures. As a result, DOE need not amend the applicable test procedure or standard to mitigate this noncompliance. DOE has advised the two manufacturers of these systems of the procedure available to affected persons under section 504 of the Department of Energy Organization Act (42 U.S.C. 7194), which allows them to request relief from hardship or inequity caused by a regulation issued under EPCA.

3. Non-Defrost Heat Pumps

The January 22, 2001, proposed rule included steps for calculating the HSPF of a non-defrost heat pump. This proposal addressed the test procedure waiver granted to Enviromaster International (EMI). In 1992, the Department granted EMI a waiver for its line of non-defrost, multi-split heat pumps. Under the waiver, the Department did not require EMI to report an HSPF and instead required EMI to include in its printed materials for the product the following sentence, "No HSPF value has been measured since the heat pump cannot be operated at temperatures below 35°F." EMI finally applied to the Department's Office of Hearing and Appeals (OHA) on January 23, 2003, for exception relief from the HSPF efficiency standards. OHA granted the exception relief on April 1, 2003. Thus, EMI has never calculated HSPF because of its waiver, and will not do so in the future because of OHA exception relief.

Since there are no manufacturers of products on the market which would actually use the proposed procedure for calculating the HSPF of a non-defrost heat pump, the Department has removed from the test procedure all references to non-defrost heat pumps and the special caveats for calculating an HSPF for such units.

4. Two-Capacity, Northern Heat Pumps

The January 22, 2001, proposed rule applied to a two-capacity heat pump configured to use only low capacity when cooling, while using both low and high capacities when heating. (66 FR 6768) The proposed test procedure identified such units as "two-capacity heat pumps that lock out high capacity when cooling." At the March 29, 2001, public hearing, York expressed concern regarding the use of the term "lockout." (Public Hearing Tr., p. 54) York felt the term was too restrictive, since it could be interpreted to mean that the lockout feature must be hard-wired, whereas DOE intended the meaning to include factory or field-selectable lockout.

At the March 29, 2001, public hearing, ARI commented that such units would typically have two different indoor coil identifiers and, as a result, two different sets of ratings. (Public Hearing Tr., p. 53) The ARI comment was supported by many of the other participants at the public hearing. ARI and York submitted written comments that supported the consensus reached at the public hearing. (ARI, No. 19 at p. 2; York, No. 9 at p. 2) The Department chose to adopt the public comment consensus and now defines these types of systems as "two-capacity, northern heat pumps." The Department included a requirement in the definition of "two-capacity, northern heat pump" that the manufacturer must clearly state that the feature is factory or field-selectable and that manufacturers must publish two sets of ratings. Finally, the definition indicates that the lockout feature is to remain enabled for all tests. The northern heat pump is allowed to operate at high capacity during its defrost cycle, an issue that arose at the public hearing. (Public Hearing Tr., p. 55)

5. Heat Pumps Having a Heat Comfort Controller

The January 22, 2001, proposed rule included an algorithm for calculating the HSPF for most single-speed heat pumps having a heat comfort controller. (66 FR 6768) At the March 29, 2001, public hearing, Trane commented that the wording in the test procedure on the calculation of the energy consumed for resistive heating by a heat comfort controller needed clarification. Trane suggested that one use the higher of: (1) The resistive heating based on meeting the heat comfort controller's temperature setting; or (2) the resistive heating based on meeting the building load deficit (when operating below the balance point). (Public Hearing Tr., p. 30) Later, Trane submitted written comments that the algorithm, as interpreted, would overstate the HSPF at heat-comfort-controller set points beginning around 90°F and get progressively worse as the set point was reduced. (Trane, No. 12)

Battelle offered three general recommendations. The first recommendation was to emphasize that comfort controllers operate both above and below the normal balance point temperature. The second recommendation was to account for the fact that conventional heat pumps and, to a lesser extent, heat pumps with comfort controllers, will cycle below the system balance point. The third recommendation was that DOE perform a parametric calculation to determine "HSPF deficits" due to the operation of a comfort controller. (Battelle, No. 11) The end product could potentially be a table listing the reduction in HSPF that results from operating the comfort controller at different temperature settings.

The American Gas Association (AGA) comments paralleled those from Battelle. Both AGA and Battelle recommended that the definition of HSPF specify that for heat pumps with heat comfort controllers, HSPF accounts for resistive heating contributed when operating either above or below the balance point as a result of maintaining a minimum supply temperature. Both also recommended that the equation for the heating load factor in section 4.2.1 be changed to the following:

$$X(T_j) = \frac{BL(T_j)}{\dot{Q}_h(T_j) + n(RH_b)}$$

where,

$X(T_j)$ = the heating mode load factor for temperature bin j, dimensionless

$BL(T_j)$ = the building space conditioning load corresponding to an outdoor temperature of T_j

$\dot{Q}_h(T_j)$ = the space heating capacity of the heat pump when operating at outdoor temperature T_j, Btu/h

RH_b = the size of each resistance heat bank

n = the number of banks needed to exceed the building load at each bin temperature.

Finally, in a slight variation from Battelle, AGA recommended that "DOE provide direction in the test procedure for evaluating performance of heat pumps retrofitted with heat comfort controllers in the field, including a parametric table of HSPF by DOE region for various delivered air temperatures." (AGA, No. 18, Battelle, No. 11)

Given the general support for covering those heat pumps having heat comfort controllers, today's test procedure covers all heat pumps having heat comfort controllers, except when a heat comfort controller is used with a heat

pump having a variable-speed compressor. Test procedure section 4.2.5.4 is reserved for a variable-speed heat pump having a heat comfort controller.

The algorithm for calculating the HSPF of a heat pump having a heat comfort controller is covered in sections 4.2.5.1 to 4.2.5.3 of today's final rule. The algorithm captures the fact that the balance point temperature (*i.e.*, where the compressor first runs continuously) for a heat pump with a heat comfort controller will be less than, or equal to, the balance point temperature of that same heat pump without the heat comfort controller. In response to Trane's comments (Public Hearing Tr., p. 30; Trane, No. 12), today's test procedure includes editorial additions that alert the user to evaluate Equation 4.2.1–2 for all temperature bins. The test procedure then accounts for the resistive heating needed to satisfy the minimum air delivery temperature of the heat comfort controller and the (additional) resistive heating needed to give an overall heating capacity that matches the building load.[3]

In considering AGA and Battelle's recommended definition change, the key point is to emphasize the downward shift in the balance point and the associated lower contribution by the heat pump. The Department doesn't believe that a single sentence referenced to heat comfort controllers within the HSPF definition, even when modified as recommended, is sufficient. Therefore, the definition of "Heat pumps having a heat comfort controller," emphasizes the downward shift in the balance point and the associated lower contribution by the heat pump.

The Department is amending the definition of HSPF by moving the following language from the definition text in the proposed rule to the main text of the test procedure, specifically, to the end of Section 4.2, "Heating Seasonal Performance Factor (HSPF) Calculations."

> For all heat pumps, HSPF accounts for the heating delivered and the energy consumed by auxiliary resistive elements when operating below the balance point. This condition occurs when the building load exceeds the space heating capacity of the heat pump condenser. For heat pumps with heat comfort controllers (see Definition 1.26), in addition, HSPF also accounts for resistive heating contributed when operating above the balance point as a result of maintaining a minimum supply temperature.

This moved text includes the one sentence from the HSPF definition in the proposed rule that specifically addressed heat comfort controllers. This sentence is the same one that both AGA and Battelle recommended changing. Coupled with the additional paragraph in Section 4.2.5, "Heat pumps having a heat comfort controller," the Department believes the revisions more accurately convey the operating changes caused by adding a heat comfort controller.

The Department did not adopt AGA and Battelle's recommendation for changing the calculation of the heating-mode-load factor. (AGA, No. 18, Battelle, No. 11) The Department agrees with AGA and Battelle that resistive heating initiated as the result of a second stage call of the indoor thermostat can, under the right conditions, cause a conventional heat pump to cycle below its balance point. Even though a conventional heat pump terminates resistive heating once the second stage setpoint is met, the concentrated burst of resistive heating coupled with the capacity of the continuously operating heat pump may cause the first stage of the thermostat to be met shortly after the second stage is met. An overshoot occurs and the heat pump cycles off. The overshoot is more likely to occur near the balance point where only a small amount of resistive heating is needed.

The existing test procedure makes the implicit assumption that an overshoot never occurs. AGA and Battelle's proposed change assumes that an overshoot always occurs. The frequency of this overshoot is unknown. Until data become available showing that overshoot occurs more often than the case where the heat pump runs continuously and the resistive elements cycle on and off at the second stage, the Department will leave the heating-load-factor calculation unchanged. The AGA and Battelle recommendation would be more appropriate if resistive heating, once initiated as the result of a second-stage call, stayed on until the first stage setpoint was met. The Department is not aware of conventional heat pumps that use this strategy, so it did not change the calculation of the heating-mode-load factor.

Heat pumps with heat comfort controllers operate differently from conventional heat pumps following a second-stage-thermostat call for resistive heating. When the second-stage setpoint is satisfied, heat comfort controllers reduce the resistive heating rather than cycling it off. In this manner, the heat comfort controller attempts to modulate the resistive heating so that additional second-stage calls are reduced while also avoiding satisfying the first-stage setpoint. The goal is for the heat pump to operate continuously below the balance point while having the resistive heating regulated to provide a more uniform delivery temperature than that provided by a conventional heat pump. The heat comfort controller's operation when responding to a second-stage-thermostat call is believed to provide a more comfortable environment for the homeowner, while not causing an energy penalty. The one field study cited by both AGA and Battelle[4] supports this assertion. Therefore, as was decided for conventional heat pumps, the Department did not adopt the AGA and Battelle recommended heating-load-factor equation within the section 4.2.5 calculations that only apply to heat pumps having a heat comfort controller.

Finally, with regard to the Battelle and AGA recommendations that the test procedure contain information on the impact of heat comfort controllers for different temperature setpoints and/or quantify the impact from an after-market retro-fit installation of a heat comfort controller, the Department agrees that such information is probably warranted but judges it inappropriate for inclusion in the test procedure. The scope of the test procedure is to test and rate new, factory-supplied equipment. Addressing the impact of after-market products on the performance of covered products is not within the purview of EPCA. However, as pointed out at the March 29, 2001, pubic hearing, the test procedure may provide a framework for building code officials' consideration when deciding how to handle the after-market sale of heat comfort controllers. (Public Hearing Tr., p. 32)

[3] When calculating the HSPF for a conventional heat pump, the section 4.2 variable $\dot{E}_h(T_j)$ and $\dot{Q}_h(T_j)$ represent the electrical power and heating capacity provided exclusively by the heat pump, while the variable $RH(T_j)$ applies exclusively to any resistive heating contribution. When calculating the HSPF of a heat pump having a heat comfort controller, by comparison, the variables $\dot{E}_h(T_j)$ and $\dot{Q}_h(T_j)$ represent the electrical power and heating capacity provided by the heat pump and any supplemental resistive heating needed to provide the comfort-controller-set-point air delivery temperature. The variable $RH(T_j)$, in this case, reflects any additional resistive heating if the combined capacity of heat pump and the resistive heating associated with achieving the set-point air delivery temperature is nonetheless insufficient to meet the building load. Electrical resistive heating for a heat pump having a heat comfort controller is thus allocated among two variables ($\dot{E}_h(T_j)$ and $RH(T_j)$) rather than one ($RH(T_j)$). This redefining allows the calculation procedure to capture the reduced heat pump contribution, the shift to a lower balance point, and the negative impact on HSPF.

[4] "Improving Occupant Comfort Without an Energy Penalty in Homes Heated by Electric Heat Pumps," Yuill, G.K., and Musser, A., ASHRAE Paper 4162, ASHRAE Transactions 1998 V. 104, Pt. 1.

B. Definitions

In addition to the amendments to the definitions discussed above in section II.A.1 of this preamble, today's final rule modifies definitions and references as described below.

An editorial correction was made to the citation for ASHRAE Standard 51–99/AMCA Standard 210–99. In the proposed rule the words "AMCA Standard" were wrongly omitted.

The definitions of "heating seasonal performance factor (HSPF)," and "seasonal energy efficiency ratio (SEER)" have been modified to move some text to later sections of the test procedure. The moved text provided complementary information that was better placed in the main text of the test procedure rather than in a definition. Sentences from the definition of HSPF were moved to Section 4.2, "Heating Seasonal Performance Factor (HSPF) Calculations." Similarly, one sentence from the definition of SEER became the first sentence in Section 4.1, "Seasonal Energy Efficiency Ratio (SEER) Calculations."

C. Testing Conditions

1. Section 2.2.4 Wet-Bulb Temperature Requirements for Air Entering the Indoor and Outdoor Coils

The January 22, 2001, proposed rule included a requirement that applied to wet-coil cooling tests of single-packaged units where all or part of the indoor section is located in the outdoor test room. The requirement was that the average dew point temperature of the air entering the outdoor coil must be within ±3.0°F of the average dew point temperature of the air entering the indoor coil. This requirement was added to address concerns about equipment leakage affecting capacity measurements. The water vapor content of the outdoor air could affect the repeatability of the measurements. Similarly, leakage could present a problem when using the Outdoor Air Enthalpy test method for testing a single-packaged heat pump where all or part of its outdoor section is located in the indoor test room.

In comments made at the March 29, 2001, public hearing and in written comments received thereafter, York and ARI agreed with the proposed requirements. (Public Hearing Tr., p. 79; York, No. 9 at p. 4; ARI, No. 19 at p. 2) The Department has adopted the proposed test requirement in today's final rule without alteration.

2. Section 2.2.5 Additional Refrigerant Charging Requirements

Existing testing procedures require that the unit be installed in accordance with the manufacturer's installation instructions. The ARI, as part of its certification program, occasionally makes decisions on what is and is not within the spirit of the requirement. Thus, a policy has evolved wherein ARI certification testing allows procedures such as break-in times for compressors and washing the oil residue from the coils prior to testing. ARI does not allow disconnecting an electrical component, such as a crankcase heater. For the most part, the Department chose to defer to ARI to maintain consistency in the test set-ups. However, the Department proposed additional limits on the specific issue of the refrigerant-charging procedure. In the section 2.2.5 of the January 22, 2001, proposed rule, the Department proposed two additional requirements. First, the Department sought to avoid a gray area of defining when an independent test laboratory should consult with the manufacturer on how to charge a unit. The proposed section included the sentence: "For third party testing, for example, do not consult the manufacturer about how to charge the unit." This requirement was thought to place extra responsibility on the manufacturer to publish accurate and clear charging instructions.

The second requirement was to promote the ideal of testing the unit in a manner that is similar to its actual installation in the field. The Department proposed amendments to section 2.2.5 to include the following sentence: "Where the manufacturer's installation instructions contain two sets of refrigerant charging criteria, one for field installations and one for lab testing, use the field installation criteria."

At the March 29, 2001, public hearing, ARI, ITS, and ACEEE spoke in favor of allowing the independent test laboratory to contact the manufacturer if it had any charging questions. (Public Hearing Tr., pages 101 to 112) This discussion noted the value of feedback in assisting the manufacturer to identify mistakes or incompleteness in its published instructions. Such feedback, if acted upon by the manufacturer, could benefit the eventual field installer. At the public hearing, attendees also came to the realization that the attempt to prevent special lab-only charging criteria could likely be circumvented by having a single criteria that listed wide ranges for such charging parameters as the targeted superheat or subcooling level(s).

The Department considered deleting the proposed section 2.2.5. However, today's final rule contains a revised version of the January 22, 2001, proposed rule language. (66 FR 6792) In the proposed rule, for third-party testing, the test laboratory was not to consult with the manufacturer about how to charge a unit. Based on the public hearing comments discussed above, today's final rule has modified this requirement. The test laboratory may consult with the manufacturer about the refrigerant-charging procedure and make changes that do not contradict the published installation instructions. The manufacturer may specify an alternative charging criteria to the third-party laboratory if the manufacturer then revises the published installation instructions accordingly. DOE decided to keep the section in an effort to convey the side benefit of the allowed feedback mechanism and to emphasize that the goal is a lab set-up as consistent as possible with a field installation.

D. Testing Procedures

1. Section 3.1.4 Airflow Through the Indoor Coil: Systems Having a Variable-Speed, Constant Airflow Blower

The January 22, 2001, proposed rule included additions to the test procedure for systems having a variable-speed, constant airflow (often called constant CFM (cubic foot per minute)) blower. These additions included:

(1) Controlling the exhaust fan of the airflow measuring apparatus to obtain a specified external static pressure. DOE received no comments on this addition.

(2) Specifying an additional test and algorithm to correct the fan power in cases where the specified external static pressure cannot be achieved during testing due to blower instabilities. ITS and York commented in favor of this addition. (Public Hearing Tr., ITS, p. 72–73, York, p. 73)

(3) Making use of the fan laws if a unit must be tested at an air volume rate other than the (cooling or heating) Certified Air Volume Rate. DOE received no comments on this addition.

(4) Allowing cyclic tests to be conducted with or without the indoor fan enabled and using a step profile for the air volume rate during cyclic tests. DOE received no comments on this addition.

(5) Imposing an 8-percent tolerance for the difference between the lab-measured and manufacturer-Certified Air Volume Rates.

At the March 29, 2001, public hearing, ARI, Trane, and York spoke in favor of making a change to eliminate the eight percent tolerance. (Public Hearing Tr., ARI, p. 69, Trane, p. 70, and York, p. 70) ARI and York submitted written comments to the same effect. (ARI, No. 19 at p. 2; York, No. 9 at p. 2) Opposition to the eight

percent tolerance was based on the industry's not wanting another certified parameter. ARI recommended that DOE limit its focus to rated capacity and seasonal performance, SEER and HSPF, and not include parameters that affect those values. (ARI, No. 19 at p. 2)

DOE proposed the tolerance to provide manufacturers with assurance that any third-party testing would employ a representative air volume rate. However, these blowers have a level of variability which may occasionally exceed the proposed eight percent tolerance. The eight-percent tolerance could cause several unnecessary stoppages in testing where the impact on rated capacity and seasonal performance would be negligible. Given the foreseeable unfavorable trade-off from imposing the tolerance, the Department has eliminated the eight-percent tolerance in today's final rule.

2. Sections 3.1.4.2, 3.1.4.5, 3.3, 3.5.1, 3.7, and 3.9.1. Testing a Two-Capacity Compressor System: Coil-Only Units Tested at Low Capacity and Differences in High/Low Cycling

The proposed test procedure sections 3.1.4.2 and 3.1.4.5 specified that the air volume rate used when testing two-capacity, coil-only units at low capacity (*i.e.*, at the Minimum Air Volume Rate) is the higher of:

(1) The rate specified by the manufacturer, or

(2) 75 percent of the air volume rate used for the high capacity tests.

At both the public hearing and in its written comments, York opposed the proposed 75-percent limit. (Public Hearing Tr., pp. 81–86; York, No. 9 at p. 3) York argued that the limit was "arbitrarily derived, is unnecessary, and restrictive towards applying existing and future technologies in motor speed controls. * * *" (York, No. 9 at p. 3) Conversely, at both the public hearing and in their written comments, both Copeland Corporation and ARI supported the defining of a lower limit. Their written comments specifically endorsed assigning the limit at 75 percent. (Public Hearing Tr., pp 86–90; Copeland Corporation, No. 13 at p. 2; ARI, No. 19 at p. 2)

This 75-percent value is based on the assumption that the two-capacity coil-only unit would most often be used with an existing multi-tap furnace blower. The low range offered from typical multi-tap motors can vary considerably. Nonetheless, the limited data collected by NIST and by industry supports the proposed 75-percent value, and DOE has included it in today's final rule.

The proposed test procedure sections 3.3, 3.5.1, 3.7 and 3.9.1 did not differentiate between the default fan power values for high capacity and low capacity. The value of 365 watts per 1000 standard cubic feet per minute (SCFM) was used in all cases. Only York commented on this issue, and York's comment supported the proposed test procedure. (Public Hearing Tr., p. 94, York, No. 9 at p. 3) York commented that the proposed low capacity default causes a conservative prediction of fan power, with a resulting error too insignificant to warrant a change. (York, No. 9 at p. 3) Today's final rule maintains the changes on this subject incorporated into the proposed test procedure.

The final two-capacity, compressor-system issue was whether there is a significant performance difference between compressors (systems) that can switch between low and high stages over a very short time interval versus those having to turn off for a short period and take longer overall to make the transition. (This issue is included because DOE received comments about it. It does not appear in the proposed rule, nor in today's final rule.) Copeland Corporation noted that it has experience manufacturing both types of compressors and that it has "observed that shutting a system down for greater than one minute has nearly the same cyclic loss impact as a typical on/off C_D penalty, since the evaporator warms up almost completely." Copeland encouraged the Department to study the issue further and stated that an appropriate action may be to conduct a test program at Intertek Testing Services (ITS). (Copeland Corporation, No. 13 at p. 1) York, on the other hand, expressed its opinion that the difference in technology was not significant enough to warrant a change in the test procedure. (York, No. 9 at p. 3) The Department has been unable to identify test procedure changes that could capture a performance difference, assuming that its overall impact significantly alters the SEER and HSPF ratings. The Department would have to make assumptions about the frequency of high/low transitions as a function of the magnitudes of the low and high stage capacities relative to each temperature bin building load. Also, data are needed to determine whether the cooling and heating mode on/off degradation coefficients could act as substitutes for the high/low transition degradation or whether a separate optional test and/or separate transition default values are warranted. In general, the Department is willing to consider future changes to the test procedure but asks that interested industry members take the lead in quantifying the impact on SEER and HSPF before making specific recommendations on how to alter the test procedure calculations.

III. Summary of Other Additions and Changes to the DOE Residential Central Air Conditioner and Heat Pump Test Procedure

Today's final rule contains numerous changes that were proposed in the January 22, 2001, proposed rule, for which the Department received no adverse comments.

A. Update and Add References for ASHRAE and ARI Standards

The current test procedure references ASHRAE Standard 37–78 and ASHRAE Standard 41.1 (no year), ARI Standard 210–79, ARI Standard 240–77, and ARI Standard 320–76. Today's final rule also includes references to ARI Standard 210/240–03, ASHRAE Standard 23–93, ASHRAE Standard 37–88, ASHRAE Standard 41.1–86 (RA 01), ASHRAE Standard 41.2–87 (RA 92), ASHRAE Standard 41.6–94 (RA 01), ASHRAE Standard 41.9–00, ASHRAE Standard 51–99/AMCA Standard 210–99, and ASHRAE Standard 116–95. The additional commercial standards are necessary to more completely inform manufacturers and testers about the multiple test options, especially for the secondary test method, and to address as many of the small details of lab testing as possible. The additional commercial standards were all included in the January 22, 2001, proposed rule. (66 FR 6768) Some of the commercial standards have been updated since the publication of the proposed rule as discussed in section II.A.1 of this preamble.

B. Air Volume Rates

The current test procedure references ARI Standard 240–77. Now, rather than referencing ARI Standard 210/240–03, which replaced ARI Standard 240–77, the Department has added its own sections to the test procedure. The main reason for no longer referencing ARI Standard 210/240 is that it does not cover variable-speed and constant CFM blowers. In addition, ARI Standard 210/240 does not directly address two-capacity and variable-speed systems. The Department believes it is preferable to have the overall issue of air volume rates covered in one place rather than in two.

The test procedure set forth in this final rule no longer references ASHRAE Standard 37–78 (or ASHRAE Standard 37–88, its replacement) for the equation

used to calculate the air volume rate of standard air, because the referenced equation is incorrect. The factor "1 $+W_n$" is missing from the denominator of the pertinent equation in both versions of ASHRAE Standard 37. Today's test procedure includes what DOE believes to be the correct version of the equation.

Today's test procedure also adopts the approach used in the ISO Standard 5151 of conducting each test at zero external static pressure when testing a non-ducted unit.

All of these "air volume rate" substantive changes were originally published in the proposed rulemaking (66 FR 6778) and are included in today's final rule.

C. Cyclic Testing

The Department is today adopting standard industry practice and the method described in ASHRAE Standard 116. Sections 4.1.1.2, 4.1.2, 4.2.2.2, and 5.1 of the current (1988) test procedure require measurement of the air volume rate during cyclic tests and use of this measurement in determining the total cooling (heating) delivered. Standard laboratory practice, by comparison, is to achieve and maintain the same velocity pressure or nozzle static pressure drop that was obtained during the comparable steady-state test. The total cooling (heating) delivered during a cyclic test, in addition, is calculated using the air volume rate measured during the comparable steady-state test. Changes to adopt this industry practice and become consistent with ASHRAE Standard 116 were introduced in the proposed rulemaking and are included in today's final rule in section 3.1.

When testing split-type non-ducted (ductless) systems, section 4.1.1.5 of the current test procedure provides, "The integration time for capacity and power shall be from compressor cut-on time to indoor fan cutoff time." The indoor fan is operated for three minutes prior to compressor cut-on and for three minutes after compressor cutoff during the final OFF/ON interval. In sections 3.5 and 3.5.2, today's final rule adopts industry practice and integrates power from compressor OFF to compressor OFF and subtracts the electrical energy associated with operating the indoor fan during the initial three-minute fan-only period. Space cooling capacity is integrated from compressor ON to indoor fan OFF. As with the current test procedure, fan energy for the three minutes after compressor cutoff is added to the integrated cooling capacity.

The current test procedure does not contain specific information regarding the air dampers: where to install them, how well they should seal, and how quickly they should respond. Appendix D of ARI Standard 210/240–03 contains much of this information. Today's final rule incorporates the required information in sections 2.5.4.1 and 2.5.7 rather than make specific references to each pertinent section of Appendix D of the ARI Standard.

For dry coil tests, today's test procedure final rule adopts, in section 3.4, the language in ARI Standard 210/240–03 Appendix D with regard to the requirements that the drain pan be plugged and completely dry.

Today's final rule clarifies in section 2.8 that the requirement of making electrical energy measurements using an instrument having an accuracy of ±0.5 percent of reading applies during both the ON and OFF intervals of cyclic tests.

Today's final rule deletes the current section 4.1.3.1, "The indoor and outdoor average dry-bulb temperature for the cyclic dry coil test D shall both be within 1.0 °F of the indoor and outdoor average dry bulb temperature for the steady-state dry coil test C, respectively." This requirement is automatically met given the 0.5 °F test condition tolerance associated with each test. (Today's amended test procedure is substantially re-organized; the section 4.1.3.1 in today's final rule has no relation to the deleted section 4.1.3.1.)

For units having a variable-speed indoor fan, the manufacturer will have the option of conducting the cyclic tests with the indoor fan either enabled or disabled, the latter being the default option if an attempt at testing with the fan enabled is unsuccessful. See section 3.5 of today's final rule. Specifically, if the test is performed with the indoor fan operating, and the fan automatically reverses, shuts down, or operates at an uncharacteristically high external static pressure, then the test must be repeated using a pull-thru method, with the fan disabled.

Although a unit having a variable-speed indoor fan may be designed to ramp its fan speed when cycling on and/or off, a step response in air volume rate is nonetheless required during cyclic tests. See section 3.5 of today's final rule. The work associated with moving the additional air during the ramp periods is performed by the exhaust fan of the air flow measuring apparatus. The step response begins at the initiation of ramp up and ends at the termination of ramp down. The rationale for imposing the step change is mainly due to the difficulty in obtaining the ramp response and then making an accurate measurement of the space conditioning delivered. Systems having indoor fans that ramp are expected to have low cyclic degradation coefficients (C_D) regardless of whether the ramp feature is used, thus the absolute improvement in C_D is expected to be minor.

D. Fanless (Coil-Only) Units

Section 4.1 of the current test procedure calls for corrections to capacity and power based on air flow measured in cubic feet per minute (CFM). Section 4.2 of the current test procedure calls for corrections to capacity and power based on air flow measured in cubic feet per minute under standard conditions (SCFM). To avoid confusion, the test procedure should base corrections on either CFM or SCFM, but not both. ITS, which tests for both the industry and ARI, uses SCFM in all cases. Therefore, in consideration of the above, today's test procedure adopts, in sections 3.3, 3.5.1, and 3.7, the practice of specifying all corrections in terms of SCFM.

The test procedure also adopts in section 2.2 the requirement in ARI Standard 210/240–03, Appendix D, that an enclosure be constructed using one-inch ductboard for testing a coil-only unit that does not employ an enclosure.

E. Frost Accumulation Test

Today's final rule adopts the convention in ASHRAE Standard 116–95 and ARI 210/240–03 of specifying the outdoor wet bulb temperature (33 °F) in place of the presently specified dew point temperature (30 °F). Sections 3.6.1, 3.6.2, 3.6.3, and 3.6.4.

F. Test Tolerance Tables

The current test procedure contains tables covering all tests except steady-state cooling-mode tests, for which Table III in ASHRAE Standard 37–78 is referenced. Since the test procedure includes all other tables, the Department chose to add the needed parts of Table III (Table 7 of this document).

The test condition tolerance for external resistance to air flow now applies only when testing non-ducted units. (See Table 7). Also, DOE has added in Table 7 a test condition tolerance for electrical supply voltage (previously, only a test operating tolerance was specified). The existing test procedure lacked a clarification that the test condition tolerance for the indoor inlet wet bulb temperature in Table III of ASHRAE Standard 37–78 does not apply for dry coil tests. Therefore, today's final rule includes a footnote to Table 7 that makes this clarification. In a similar attempt to clarify when particular tolerances apply, today's final rule also includes a

footnote to tables stating that the test tolerances given for the outdoor outlet dry and wet bulb temperatures only apply when using the Outdoor Air Enthalpy Method to provide the secondary capacity measurement.

For the Frost Accumulation Test, DOE modified slightly the intervals considered to be heating versus defrosting. Specifically, in the current test procedure in section 4.2.3.3, the first five minutes after a defrost termination was included in the defrost interval. In today's final rule, the time interval has been increased to ten minutes in section 3.7. This is a better approximation of the time needed for temperatures to reach equilibrium after defrost termination. Also, in making the test condition conversion of 30 °F dew point to 33 °F wet bulb, the test operating tolerance and test condition tolerance convert to wet bulb temperature tolerances of 0.6 °F and 0.3 °F, respectively. This 0.6 °F test operating tolerance on outdoor wet bulb temperature is more stringent than the value allowed for the steady-state tests. The 0.3 °F test condition tolerance is the same as required for steady-state tests. Because these tolerances should be less stringent that those required of a steady-state test, the test procedure adopts in Table 15 the values given in ASHRAE Standard 37: 1.5 °F and 0.5 °F.

G. Pretest Intervals

1. Wet Coil Tests

The following change makes the test conditions more specific than they are in the current test procedure:

Current: "The test room reconditioning apparatus and the equipment under test shall be operated until equilibrium conditions are attained." (Section 4.1.1.1)

Today's final rule: "For the pretest interval, operate the test room reconditioning apparatus and the unit to be tested until maintaining equilibrium conditions for at least 30 minutes at the specified section 3.2 test conditions." (Section 3.3)

2. Dry Coil Steady-State Test

The following change also makes the test conditions more specific than they are in the current test procedure. The industry realized the merits of this improved wording several years ago. The added text is taken from a prescriptive methodology that appears within an appendix of ARI Standard 210/240–2003.

Current: "The test room reconditioning apparatus and the equipment under test shall be operated until equilibrium conditions are attained, but not for less than one hour before data for test C are recorded." (Section 4.1.1.2)

Today's final rule: Same as proposed for section 3.3 wet coil tests with the additional requirement to "operate the unit at least one hour after achieving dry coil conditions." (Section 3.4)

3. Dry Coil Cyclic Test

The following change makes the test conditions more specific than they are in the current test procedure. The existing language is weaker because the phrase "until steadily repeating ambient conditions are again achieved" is comparatively subjective.

Current: "[T]est unit shall be manually cycled 'off' and 'on'* * * until steadily repeating ambient conditions are again achieved in both the indoor and outdoor test chambers, but for not less than two complete 'off/on' cycles." (Section 4.1.1.2)

Today's final rule: "After completing a minimum of two complete compressor OFF/ON cycles, determine the overall cooling delivered and total electrical energy consumption during any subsequent data collection interval where the test tolerances given in Table 8 are satisfied." (Section 3.5)

4. Maximum and High Temperature Heating Mode Tests

The requirement for the test apparatus and the test unit to operate for at least one hour was dropped based on industry comments that it had no bearing on the outcome of the testing—the key is to have steady operation at the specified test conditions for an interval (30 minutes) prior to starting the test.

Current: "The test room apparatus and test units must be operated for at least one hour with at least one-half hour at equilibrium and at the specified test conditions prior to starting the test." (Section 4.2.1.1)

Today's final rule: "For the pretest interval, operate the test room reconditioning apparatus and the heat pump until equilibrium conditions are maintained for at least 30 minutes at the specified section 3.6 test conditions." (Section 3.7)

5. Heating Mode Cyclic Test

The new language is more definitive and easier for a test laboratory to understand and implement. The existing language is weaker because the phrase "until steadily repeating ambient conditions are again achieved" is comparatively subjective.

Current: "[A]nd be cycled 'on' and 'off' as specified in 3.2.1.2 until steadily repeating ambient conditions are achieved for both the indoor and outdoor test chambers, but for not less than two complete 'off'/'on' cycles." (Section 4.2.1.2)

Today's final rule: "After completing a minimum of two complete compressor OFF/ON cycles, determine the overall cooling delivered and total electrical energy consumption during any subsequent data collection interval where the test tolerances given in Table 8 are satisfied." (Section 3.5)

6. Frost Accumulation Test

The new wording is clearer about the goal of getting the test room to achieve and maintain the specified test conditions. It clarifies the 30-minute requirement as a period that starts after the test conditions are first achieved.

Current: "The test room reconditioning equipment and the unit under test shall be operated for at least one-half hour prior to the start of a 'preliminary' test period." (Section 4.2.1.3)

Today's final rule: "Operate the test room reconditioning apparatus and the heat pump for at least 30 minutes at the specified section 3.6 test conditions before starting the 'preliminary' test period." (Section 3.9)

7. Low Temperature Test

The existing language can be interpreted to mean that one only needs to achieve the test conditions immediately prior to starting the test as opposed to maintaining the test conditions for at least 30 minutes prior to starting the test. The new wording is clearer. The new wording also clarifies the sequential process for having the heat pump conduct a defrost.

Current: "The test room reconditioning equipment shall first be operated in a steady-state manner for at least one-half hour at equilibrium and at the specified test conditions. The unit shall then undergo a defrost, either automatic or manually induced." (Section 4.2.1.4)

Today's final rule: "For the pretest interval, operate the test room reconditioning apparatus and the heat pump until equilibrium conditions are maintained for at least 30 minutes at the specified section 3.6 test conditions." (Section 3.7) "After satisfying the section 3.7 requirements for the pretest interval, but before beginning to collect data to determine $\dot{Q}_h^k(17)$ and $\dot{E}_h^k(17)$, conduct a defrost cycle. This defrost cycle may be manually or automatically initiated." (Section 3.10)

H. Multi-Capacity Systems

1. Two-Capacity Heat Pumps That Lock Out Low Capacity at Higher Outdoor Temperatures

The current test procedure in section 2.2.2 covers two-capacity units that operate exclusively at high capacity when the building load exceeds the unit's low capacity. The Department is unaware of any two-capacity units that implement such a control strategy, and so DOE is not including coverage of them in today's final rule. However, the Department is adding coverage in section 3.2.3 to address units that lock out low capacity operation at low (heating) or high (cooling) outdoor temperatures. Today's test procedure uses the C_D determined based on cycling at low capacity (or the appropriate default) in all cases.

2. Systems Having a Single-Speed Compressor and a Variable-Speed Indoor Fan Where Fan Speed or Air Volume Rate Depends on Outdoor Temperature

Today's final rule requires two additional steady-state tests for the cooling mode (see section 3.2.2.1 and Table 4) and two additional steady-state tests for the heating mode (see section 3.6.2 and Table 10). The additional tests, at a different air volume rate, are required to calculate the effect of the variable-speed indoor fan. An additional frost accumulation test is optional.

I. Triple-Split Systems

The current DOE test procedure, in sections 4.1 and 4.2.1, refers to ASHRAE Standard 37–78 on the issue of laboratory set up procedures. Section 3.1.3 of ASHRAE Standard 37–78 requires using the calorimeter air-enthalpy method arrangement when testing units where the compressor is in the indoor section and separately ventilated. For this arrangement, an enclosure must be built around the equipment within the indoor chamber. The present requirement is burdensome, and DOE has learned no one uses it when testing triple-splits. Furthermore, the heat loss from the indoor compressor section should be reflected, if at all, in an adjusted output capacity and not by a raised entering-air temperature because the lost heat is transferred to the surrounding ambient, not dissipated within the return air duct. The surrounding ambient, in this case, may or may not be part of the conditioned space.

The amount of heat dissipated to the ambient by the indoor compressor section of such units is usually minimized as a result of the insulated enclosure of the third section (mainly in an effort to reduce the operating noise). Based on the limited information currently available, DOE believes that the amount of heat lost from the indoor compressor section is on the order of two percent or less of the unit's space conditioning capacity.

Today's final rule reflects the assumption that the heat loss from the indoor compressor section contributes nothing to the unit's overall delivered capacity if the compressor section is located in an unconditioned space. If the compressor section is located in the conditioned space, it still contributes only a negligible amount. Today's final rule specifies that triple-split systems are not to be tested using the calorimeter air-enthalpy method arrangement (see note in section 2.6 of the test procedure in today's final rule). The final rule does not provide for any adjustment to capacity, or any algorithm or method for assigning/determining the heat loss from the indoor compressor section. If triple-split systems become more popular and if information becomes available indicating the heat loss from the indoor compressor section exceeds two percent of the air-side capacity, then DOE will revisit the option of having a capacity adjustment.

J. Time-Adaptive Defrost Control Systems

When conducting a frost accumulation test on a heat pump having a time-adaptive defrost control system, repeatable frosting and defrosting intervals typically require (if obtainable at all) an excessive number of cycles. The tester must manually initiate defrosts during the "preliminary" test and the "official" test. Under today's final rule, the manufacturer must provide information as to how long the unit would optimally frost before it initiates a defrost, and on how to initiate a defrost cycle at the appropriate elapsed time. See section 2.2.1. However, the controls of the unit will still control the duration of the defrost cycle after its initiation.

K. Test Unit Installation

For the most part, equipment installation requirements under today's final rule will continue according to the manufacturer's field installation instructions. However, today's final rule adopts the lab and field practice of insulating the low pressure line(s) of a split system. See section 2.2.

L. Test Apparatus and Measurement/ Sampling Frequency

1. Inlet Plenum for Blower Coils

The current DOE test procedure does not require an inlet plenum when testing blower coil units. (Lab ceiling height on vertical installation is a limitation.) In today's final rule, the manufacturer has the option to test with or without an inlet plenum installed when testing a ducted unit having an indoor fan. Space limitations within the test room may dictate that the manufacturer choose the latter option. (Section 2.4.2)

2. Manifolded Static Pressure Taps

The current (1988) test procedure does not discuss methods of manifolding static pressure taps. Today's final rule allows three configurations: The triple-T configuration; the complete ring, four-to-one manifold configuration; and the broken-ring, four-to-one manifold configuration. (Section 2.4.1) A 1976 study found the triple-T configuration to be the preferred method for manifolding static pressure taps.[5] The broken-ring, four-to-one manifold configuration is generally considered to be the least accurate of the three methods.

3. Temperature Measurement Intervals

Today's final rule (Definition 1.15) specifies dry-bulb temperature measurements at the intervals specified in ASHRAE Standard 41.1–86 (RA01). The tester must measure wet bulb temperature, dew point temperature, or relative humidity at the minimum sampling interval specified in the definition of the term "Continuously recorded."

4. Temperature Measurement Accuracies

Today's final rule (sections 2.5.5, 2.5.6, 2.11) incorporates the accuracy and precision requirements of temperature measurement from ASHRAE Standard 41.1–86 (RA 01).

5. Grid of Individual Temperature Sensors Within the Indoor-Side Outlet Plenum

Today's final rule adopts the requirements in ARI Standard 210/240–03, Appendix D, that a temperature spread of 1.5 °F or less be obtained, and that a minimum of 9 sensors compose the outlet temperature grid. (Section 2.5.5.) The January 22, 2001, proposed rule contained these DOE recommendations (66 FR 6796):

[5] "The Design of Piezometer Rings" by K. A. Blake, *Journal of Fluid Mechanics*, Vol. 78, 1976, part 2, pp. 415–428.

DOE recommends using 16 temperature sensors within each temperature grid. DOE recommends installing redundant inlet and outlet dry bulb temperature sensors and particularly a thermopile. If using thermocouples, DOE recommends the following:

(1) Use 24 gauge wire;

(2) Remove approximately 1 inch of insulation from each lead when preparing to make a junction; and

(3) Use no more than two bonded turns per junction.

The Department believes these recommendations to be sound, but today's final rule omits them because recommendations are not appropriate in a regulatory test procedure.

6. Duct Loss Correction

Today's final rule includes a correction for the heat transfer between the test room and an outlet duct sandwiched between the coil and the outlet temperature grid. (Section 3.11) This correction is already an industry practice.

7. Water Vapor Measurements Using a Dew-Point Hygrometer, a Relative Humidity Meter, or Any Other Alternative Instrument

Today's final rule explicitly permits alternatives to using wet bulb temperature sensors. To ease instrumentation selection, the rule specifies required instrument accuracies for dew point hygrometers and relative humidity meters. (Section 2.5.6)

8. Voltmeter Accuracy

The required accuracy of voltage measurements has been changed from ±2 percent to ±1 percent. (Section 2.7)

9. Electrical Power Measurement

Adjustable-speed-driven motors, as used in a variable-speed compressor, distort the input current and, to a lesser degree, voltage waveforms. For reasons that were outlined in the preamble of the January 22, 2001, proposed rule (66 FR 6779), today's final rule (Section 2.8) eschews the use of induction type meters for measuring such non-sinusoidal power. The January 22, 2001, proposed rule included a recommendation to use a meter capable of sampling up to the 50th harmonic. Sampling up to the 50th harmonic reduces the chances for measurement errors, but the extra expense for such a piece of equipment may not be justified, so today's final rule does not require its use.

M. Different Compressor Speeds and Indoor Fan Capacities Between Cooling and Heating

The existing test procedure covers variable-speed systems that operate at higher speeds when heating than when cooling. Today's final rule extrapolates this allowance to coverage of two-capacity, northern heat pumps (see section 4.2). Today's rule covers any case where the heat pump uses different fan speeds or air volume rates for cooling versus when heating. (Section 3.1.4.4.2)

N. Secondary Test Requirements

When using the Outdoor Air Enthalpy test method, the tester must conduct a preliminary test to compensate, if necessary, for any performance impact resulting from the outdoor air-side test apparatus. (Section 3.11.1) In the existing test procedure, a preliminary test is conducted prior to all steady-state tests (*i.e.*, those tests that require a secondary measurement of capacity). Today's final rule relaxes this requirement. Section 3.11.1 indicates that the number of preliminary tests can be reduced in most cases to one (for air conditioners or heating-only heat pumps) or two (for heat pumps): One for the first cooling mode steady-state test and one for the first heating mode steady-state test. The above "test apparatus and measurement/sampling frequency" substantive changes were introduced in the proposed rulemaking and are maintained in today's final rule. (Section 3.11.1)

O. HSPF Calculations

Today's final rule does not include the final paragraph of sections 5.2.1 and 5.2.2 of the current test procedure. The paragraph in question reads "Once the maximum and minimum HSPF and operating cost values have been obtained for each region, the HSPF and operating cost shall be determined for each standardized design heating requirement (see section 6.2.6) between the maximum and minimum design heating requirements by means of interpolation." The number of required HSPF calculations is covered in 10 CFR Subpart B, 430.23(m)(3)(ii). In today's final rule, this section of the CFR is noted in the Definition (1.27) for HSPF. Because of the relative ease of automating the calculation process, and the nonlinearity of the HSPF-versus-design-heating-requirement relationship, today's final rule makes no reference to obtaining HSPF or operating cost via interpolation.

P. Effect of Test Procedure Revisions on SEER and HSPF

The most significant revisions to the test procedure in this final rule adopt industry practices and clear up gray areas with more precise instructions. No existing requirements are changed, but new requirements are added. Based on its development, review and analysis of the test procedure revisions being published today, the Department believes that these test procedure revisions will have no material impact on the measured values of SEER and HSPF, and thus it has satisfied the requirement of 42 U.S.C. 6293(e)(1): "In the case of any amended test procedure which is prescribed pursuant to this section, the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure." In the January 22, 2001, proposed rule, the Department asked for comments on this issue (66 FR 6782), and received no comments contending that these revisions would impact measured values of SEER and HSPF.

IV. Procedural Requirements

A. Review Under Executive Order 12866

It has been determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) .

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. (68 FR 7990) DOE has made its procedures and policies

available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certified in the January 22, 2001, proposed rule that the proposed rule would not impose a significant economic impact on a substantial number of small entities. (66 FR 6780) DOE received no comments on this issue, and after considering the potential small entity impact of this final rule, DOE affirms the certification that this rule will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

This rulemaking imposes no new information or record keeping requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.)

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Department's implementing regulations at 10 CFR part 1021. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735) DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). The rule published today contains neither an intergovernmental mandate, nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded

that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OIRA, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (FEAA), as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788) Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. This final rule incorporates nine commercial standards as discussed in section II.A.1 of this preamble.

The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, *i.e.*, that they were developed in a manner which fully provides for public participation, comment and review. As required by Section 32(c) of the FEAA, the Department has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these two standards on competition, and neither recommended against incorporation of these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

N. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on July 21, 2005.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.22 is amended:
■ a. In paragraph (b)(1) by adding paragraph (b)(1)8.
■ b. In paragraph (b)(5) by removing paragraph (b)(5)2., and adding new paragraphs (b)(5)2. through (b)(5)9.
■ c. By adding paragraph (b)(8).

The additions specified above read as follows:

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(1) * * *

8. ANSI Standard Z21.56–1994, "Gas-Fired Pool Heaters," section 2.9.

* * * * *

(5) * * *

2. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 23–1993, "Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units."

3. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 37–1988, "Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment."

4. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.1–1986 (Reaffirmed 2001), "Standard Method for Temperature Measurement."

5. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.2–1987 (Reaffirmed 1992), "Standard Methods for Laboratory Airflow Measurement."

6. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.6–1994 (Reaffirmed 2001), "Standard Method for Measurement of Moist Air Properties."

7. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.9–2000, "Calorimeter Test Methods for Mass Flow Measurements of Volatile Refrigerants."

8. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 116–1995, "Methods of Testing for Rating for Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps."

9. American Society of Heating, Refrigerating, and Air-Conditioning Engineers/Air Movement and Control Association International, Inc. Standard 51–1999/210–1999, "Laboratory Methods of Testing Fans for Aerodynamic Performance Rating."

* * * * *

(8) Air-Conditioning and Refrigeration Institute (ARI), 4100 North Fairfax Drive, Suite 200, Arlington, Virginia 22203–1629, (703) 524–8800, ARI Standard 210/240–2003, "Unitary Air-Conditioning and Air-Source Heat Pump Equipment."

* * * * *

■ 3. Section 430.23 of subpart B is amended by revising the section heading, paragraph (m) introductory heading and paragraph (m)(1), (2), and (3) to read as follows:

§ 430.23 Test procedure for measures of energy consumption.

* * * * *

(m) *Central air conditioners and heat pumps.* (1) The estimated annual operating cost for cooling-only units and air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of:

(A) The quotient of the cooling capacity, in Btu's per hour, determined from the steady-state wet-coil test (A or A_2 Test), as described in section 3.2 of appendix M to this subpart, divided by the seasonal energy efficiency ratio (SEER), in Btu's per watt-hour, determined from section 4.1 of appendix M to this subpart;

(B) The representative average use cycle for cooling of 1,000 hours per year;

(C) A conversion factor of 0.001 kilowatt per watt; and

(D) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year.

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of:

(A) The quotient of the standardized design heating requirement, in Btu's per hour, nearest to the heating Region IV minimum design heating requirement, determined in section 4.2 of appendix M to this subpart, divided by the heating seasonal performance factor (HSPF), in Btu's per watt-hour, calculated for heating Region IV corresponding to the above-mentioned standardized design heating requirement and determined in section 4.2 of appendix M to this subpart;

(B) The representative average use cycle for heating of 2,080 hours per year;

(C) The adjustment factor of 0.77 which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system;

(D) A conversion factor of 0.001 kilowatt per watt; and

(E) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year.

(iii) For air-source heat pumps which provide both heating and cooling, the estimated annual operating cost is the sum of the quantity determined in paragraph (m)(1)(i) of this section added to the quantity determined in paragraph (m)(1)(ii) of this section.

(2) The estimated regional annual operating cost for cooling-only units and for air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of:

(A) The quotient of the cooling capacity, in Btu's per hour, determined from the steady-state wet-coil test (A or A_2 Test), as described in section 3.2 of appendix M to this subpart, divided by the seasonal energy efficiency ratio (SEER), in Btu's per watt-hour, determined from section 4.1 of appendix M to this subpart;

(B) The estimated number of regional cooling load hours per year determined from Figure 3 in section 4.3 of appendix M to this subpart;

(C) A conversion factor of 0.001 kilowatts per watt; and

(D) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year.

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of:

(A) The estimated number of regional heating load hours per year determined from Figure 2 in section 4.3 of appendix M to this subpart;

(B) The quotient of the standardized design heating requirement, in Btu's per hour, for the appropriate generalized climatic region of interest (*i.e.*, corresponding to the regional heating load hours from "A") and determined in section 4.2 of appendix M to this subpart, divided by the heating seasonal performance factor (HSPF), in Btu's per watt-hour, calculated for the appropriate generalized climatic region of interest and corresponding to the above-mentioned standardized design heating requirement while being determined in section 4.2 of appendix M to this subpart;

(C) The adjustment factor of 0.77 which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system;

(D) A conversion factor of 0.001 kilowatts per watt; and

(E) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year.

(iii) For air-source heat pumps which provide both heating and cooling, the estimated regional annual operating cost is the sum of the quantity determined in paragraph (m)(3)(i) of this section added to the quantity determined in paragraph (m)(3)(ii) of this section.

(3) The measure(s) of efficiency of performance for cooling-only units and air-source heat pumps shall be one or more of the following:

(i) The cooling mode efficiency measure for cooling-only units and air-source heat pumps which provide cooling shall be the seasonal energy efficiency ratio (SEER), in Btu's per watt-hour, determined according to section 4.1 of appendix M to this subpart, rounded off to the nearest 0.05.

(ii) The heating mode efficiency measure for air-source heat pumps shall be the heating seasonal performance factors (HSPF), in Btu's per watt-hour, determined according to section 4.2 of appendix M to this subpart for each applicable standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(iii) The annual efficiency measure for air-source heat pumps which provide heating and cooling, shall be the annual performance factors (APF), in Btu's per watt-hour, determined according to section 4.3 of appendix M to this subpart for each standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

* * * * *

■ 4. Section 430.24 of subpart B is amended by revising the introductory text for paragraph (m)(1) to read as follows:

§ 430.24 Units to be tested.

* * * * *

(m)(1) For central air conditioners and heat pumps, each condensing unit (outdoor unit) shall have a condenser-evaporator (outdoor coil-indoor coil) combination selected and a sample of sufficient size tested in accordance with applicable provisions of this subpart such that

* * * * *

■ 5. Appendix M to Subpart B is revised to read as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

4.1.4.2 Unit operates at an intermediate compressor speed (k=i) in order to match the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

4.1.4.3 Unit must operate continuously at maximum (k=2) compressor speed at temperature T_j, $BL(T_j) \geq \dot{Q}_c^{k=2}(T_j)$.

4.2 Heating Seasonal Performance Factor (HSPF) Calculations.

4.2.1 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed.

4.2.2 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan.

4.2.3 Additional steps for calculating the HSPF of a heat pump having a two-capacity compressor.

4.2.3.1 Steady-state space heating capacity when operating at low compressor capacity is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$.

4.2.3.2 Heat pump alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j)$ $BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

4.2.3.3 Heat pump only operates at high (k=2) compressor capacity at temperature T_j and its capacity is greater than the building heating load, $BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

4.2.3.4 Heat pump must operate continuously at high (k=2) compressor capacity at temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$.

4.2.4 Additional steps for calculating the HSPF of a heat pump having a variable-speed compressor.

4.2.4.1 Steady-state space heating capacity when operating at minimum compressor speed is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$.

4.2.4.2 Heat pump operates at an intermediate compressor speed (k=i) in order to match the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

4.2.4.3 Heat pump must operate continuously at maximum (k=2) compressor speed at temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$.

4.2.5 Heat pumps having a heat comfort controller.

4.2.5.1 Heat pump having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed.

4.2.5.2 Heat pump having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan.

4.2.5.3 Heat pumps having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a two-capacity compressor.

4.2.5.4 Heat pumps having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a variable-speed compressor. [Reserved]

4.3 Calculations of the Actual and Representative Regional Annual Performance Factors for Heat Pumps.

4.3.1 Calculation of actual regional annual performance factors (APF_A) for a particular location and for each standardized design heating requirement.

4.3.2 Calculation of representative regional annual performance factors (APF_R) for each generalized climatic region and for each standardized design heating requirement.

4.4 Rounding of SEER, HSPF, and APF for reporting purposes.

1. Definitions

1.1 Annual performance factor means the total heating and cooling done by a heat pump in a particular region in one year divided by the total electric energy used in one year. Paragraph (m)(3)(iii) of § 430.23 of the Code of Federal Regulations states the calculation requirements for this rating descriptor.

1.2 ARI means Air-Conditioning and Refrigeration Institute.

1.3 ARI Standard 210/240–2003 means the test standard "Unitary Air-Conditioning and Air-Source Heat Pump Equipment" published in 2003 by ARI.

1.4 ASHRAE means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

1.5 ASHRAE Standard 23–93 means the test standard "Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units" published in 1993 by ASHRAE.

1.6 ASHRAE Standard 37–88 means the test standard "Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment" published in 1988 by ASHRAE.

1.7 ASHRAE Standard 41.1–86 (RA 01) means the test standard "Standard Method for Temperature Measurement" published in 1986 and reaffirmed in 2001 by ASHRAE.

1.8 ASHRAE Standard 41.2–87 (RA 92) means the test standard "Standard Methods for Laboratory Airflow Measurement" published in 1987 and reaffirmed in 1992 by ASHRAE.

1.9 ASHRAE Standard 41.6–94 (RA 01) means the test standard "Method for Measurement of Moist Air Properties" published in 1994 and reaffirmed in 2001 by ASHRAE.

1.10 ASHRAE Standard 41.9–00 means the test standard "Calorimeter Test Methods for Mass Flow Measurements of Volatile Refrigerants" published in 2000 by ASHRAE.

1.11 ASHRAE Standard 51–99/AMCA Standard 210–1999 means the test standard "Laboratory Methods of Testing Fans for Aerodynamic Performance Rating" published in 1999 by ASHRAE and the Air Movement and Control Association International, Inc.

1.12 ASHRAE Standard 116–95 means the test standard "Methods of Testing for Rating for Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps" published in 1995 by ASHRAE.

1.13 CFR means Code of Federal Regulations.

1.14 Constant-air-volume-rate indoor fan means a fan that varies its operating speed to provide a fixed air-volume-rate from a ducted system.

1.15 Continuously recorded, when referring to a dry bulb measurement, means that the specified temperature must be sampled at regular intervals that are equal to or less than the maximum intervals specified in section 4.3 part "a" of ASHRAE Standard 41.1–86 (RA 01). If such dry bulb temperatures are used only for test room control, it means that one samples at regular intervals equal to or less than the maximum intervals specified in section 4.3 part "b" of the same ASHRAE Standard. Regarding wet bulb temperature, dew point temperature, or relative humidity measurements, continuously recorded means that the measurements must be made at regular intervals that are equal to or less than 1 minute.

1.16 Cooling load factor (CLF) means the ratio having as its numerator the total cooling delivered during a cyclic operating interval consisting of one ON period and one OFF period. The denominator is the total cooling that would be delivered, given the same ambient conditions, had the unit operated continuously at its steady-state space cooling capacity for the same total time (ON + OFF) interval.

1.17 Coefficient of Performance (COP) means the ratio of the average rate of space heating delivered to the average rate of electrical energy consumed by the heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be tied to a single set of operating conditions. COP is a dimensionless quantity. When determined for a ducted unit tested without an indoor fan installed, COP must include the section 3.7, 3.8, and 3.9.1 default values for the heat output and power input of a fan motor.

1.18 Cyclic Test means a test where the unit's compressor is cycled on and off for specific time intervals. A cyclic test provides half the information needed to calculate a degradation coefficient.

1.19 Damper box means a short section of duct having an air damper that meets the performance requirements of section 2.5.7.

1.20 Degradation coefficient (C_D) means a parameter used in calculating the part load factor. The degradation coefficient for cooling is denoted by C_D^c. The degradation coefficient for heating is denoted by C_D^h.

1.21 Demand-defrost control system means a system that defrosts the heat pump outdoor coil only when measuring a predetermined degradation of performance. The heat pump's controls monitor one or more parameters that always vary with the amount of frost accumulated on the outdoor coil (*e.g.*, coil to air differential temperature, coil differential air pressure, outdoor fan power or current, optical sensors, etc.) at least once for every ten minutes of compressor ON-time when space heating. One acceptable alternative to the criterion given in the prior sentence is a feedback system that measures the length of the defrost period and adjusts defrost frequency accordingly.[1] In all cases, when the frost parameter(s) reaches a predetermined value,

[1] Systems that vary defrost intervals according to outdoor dry-bulb temperature are not demand defrost systems.

the system initiates a defrost. In a demand-defrost control system, defrosts are terminated based on monitoring a parameter(s) that indicates that frost has been eliminated from the coil.

A demand-defrost control system, which otherwise meets the above requirements, may allow time-initiated defrosts if, and only if, such defrosts occur after 6 hours of compressor operating time.

1.22 Design heating requirement (DHR) predicts the space heating load of a residence when subjected to outdoor design conditions. Estimates for the minimum and maximum DHR are provided for six generalized U.S. climatic regions in section 4.2.

1.23 Dry-coil tests are cooling mode tests where the wet-bulb temperature of the air supplied to the indoor coil is maintained low enough that no condensate forms on this coil.

1.24 Ducted system means an air conditioner or heat pump that is designed to be permanently installed equipment and delivers conditioned air to the indoor space through a duct(s). The air conditioner or heat pump may be either a split system or a single-packaged unit.

1.25 Energy efficiency ratio (EER) means the ratio of the average rate of space cooling delivered to the average rate of electrical energy consumed by the air conditioner or heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be tied to a single set of operating conditions. EER is expressed in units of

$$\frac{\text{Btu/h}}{\text{W}}.$$

When determined for a ducted unit tested without an indoor fan installed, EER must include the section 3.3 and 3.5.1 default values for the heat output and power input of a fan motor.

1.26 Heating load factor (HLF) means the ratio having as its numerator the total heating delivered during a cyclic operating interval consisting of one ON period and one OFF period. The denominator is the total heating that would be delivered, given the same ambient conditions, if the unit operated continuously at its steady-state space heating capacity for the same total time (ON plus OFF) interval.

1.27 Heating seasonal performance factor (HSPF) means the total space heating required during the space heating season, expressed in Btu's, divided by the total electrical energy consumed by the heat pump system during the same season, expressed in watt-hours. The HSPF used to evaluate compliance with the Energy Conservation Standards (see 10 CFR 430.32(c), Subpart C) is based on Region IV, the minimum standardized design heating requirement, and the sampling plan stated in 10 CFR 430.24(m), Subpart B.

1.28 Heat pump having a heat comfort controller means equipment that regulates the operation of the electric resistance elements to assure that the air temperature leaving the indoor section does not fall below a specified temperature. This specified temperature is usually field adjustable. Heat pumps that actively regulate the rate of electric resistance heating when operating below the balance point (as the result of a second stage call from the thermostat) but do not operate to maintain a minimum delivery temperature are not considered as having a heat comfort controller.

1.29 Mini-split air conditioners and heat pumps means systems that have a single outdoor section and one or more indoor sections. The indoor sections cycle on and off in unison in response to a single indoor thermostat.

1.30 Multiple-split air conditioners and heat pumps means systems that have two or more indoor sections. The indoor sections operate independently and can be used to condition multiple zones in response to multiple indoor thermostats.

1.31 Non-ducted system means an air conditioner or heat pump that is designed to be permanently installed equipment and directly heats or cools air within the conditioned space using one or more indoor coils that are mounted on room walls and/or ceilings. The unit may be of a modular design that allows for combining multiple outdoor coils and compressors to create one overall system. Non-ducted systems covered by this test procedure are all split systems.

1.32 Part-load factor (PLF) means the ratio of the cyclic energy efficiency ratio (coefficient of performance) to the steady-state energy efficiency ratio (coefficient of performance). Evaluate both energy efficiency ratios (coefficients of performance) based on operation at the same ambient conditions.

1.33 Seasonal energy efficiency ratio (SEER) means the total heat removed from the conditioned space during the annual cooling season, expressed in Btu's, divided by the total electrical energy consumed by the air conditioner or heat pump during the same season, expressed in watt-hours. The SEER calculation in section 4.1 of this Appendix and the sampling plan stated in 10 CFR Subpart B, 430.24(m) are used to evaluate compliance with the Energy Conservation Standards. (See 10 CFR 430.32(c), Subpart C.)

1.34 Single-packaged unit means any central air conditioner or heat pump that has all major assemblies enclosed in one cabinet.

1.35 Small-duct, high-velocity system means a system that contains a blower and indoor coil combination that is designed for, and produces, at least 1.2 inches (of water) of external static pressure when operated at the certified air volume rate of 220–350 cfm per rated ton of cooling. When applied in the field, small-duct products use high-velocity room outlets (*i.e.*, generally greater than 1000 fpm) having less than 6.0 square inches of free area.

1.36 Split system means any air conditioner or heat pump that has one or more of the major assemblies separated from the others.

1.37 Standard Air means dry air at 70 °F and 14.696 psia. Under these conditions, dry air has a mass density of 0.075 lb/ft^3.

1.38 Steady-state test means a test where the test conditions are regulated to remain as constant as possible while the unit operates continuously in the same mode.

1.39 Temperature bin means the 5 °F increments that are used to partition the outdoor dry-bulb temperature ranges of the cooling (≥ 65 °F) and heating (< 65 °F) seasons.

1.40 Test condition tolerance means the maximum permissible difference between the average value of the measured test parameter and the specified test condition.

1.41 Test operating tolerance means the maximum permissible range that a measurement may vary over the specified test interval. The difference between the maximum and minimum sampled values must be less than or equal to the specified test operating tolerance.

1.42 Time adaptive defrost control system is a demand-defrost control system (see definition 1.21) that measures the length of the prior defrost period(s) and uses that information to automatically determine when to initiate the next defrost cycle.

1.43 Time-temperature defrost control systems initiate or evaluate initiating a defrost cycle only when a predetermined cumulative compressor ON-time is obtained. This predetermined ON-time is generally a fixed value (*e.g.*, 30, 45, 90 minutes) although it may vary based on the measured outdoor dry-bulb temperature. The ON-time counter accumulates if controller measurements (*e.g.*, outdoor temperature, evaporator temperature) indicate that frost formation conditions are present, and it is reset/remains at zero at all other times. In one application of the control scheme, a defrost is initiated whenever the counter time equals the predetermined ON-time. The counter is reset when the defrost cycle is completed.

In a second application of the control scheme, one or more parameters are measured (*e.g.*, air and/or refrigerant temperatures) at the predetermined, cumulative, compressor ON-time. A defrost is initiated only if the measured parameter(s) falls within a predetermined range. The ON-time counter is reset regardless of whether a defrost is initiated. If systems of this second type use cumulative ON-time intervals of 10 minutes or less, then the heat pump may qualify as having a demand defrost control system (see definition 1.21).

1.44 Triple-split system means an air conditioner or heat pump that is composed of three separate components: An outdoor fan coil section, an indoor fan coil section, and an indoor compressor section.

1.45 Two-capacity (or two-stage) compressor means an air conditioner or heat pump that has one of the following:

(1) A two-speed compressor,

(2) Two compressors where only one compressor ever operates at a time,

(3) Two compressors where one compressor (Compressor #1) operates at low loads and both compressors (Compressors #1 and #2) operate at high loads but Compressor #2 never operates alone, or

(4) A compressor that is capable of cylinder or scroll unloading.

For such systems, low capacity means:

(1) Operating at low compressor speed,

(2) Operating the lower capacity compressor,

(3) Operating Compressor #1, or

(4) Operating with the compressor unloaded (*e.g.*, operating one piston of a two-piston reciprocating compressor, using a

fixed fractional volume of the full scroll, etc.).

For such systems, high capacity means:

(1) Operating at high compressor speed,

(2) Operating the higher capacity compressor,

(3) Operating Compressors #1 and #2, or

(4) Operating with the compressor loaded (*e.g.*, operating both pistons of a two-piston reciprocating compressor, using the full volume of the scroll).

1.46 Two-capacity, northern heat pump means a heat pump that has a factory or field-selectable lock-out feature to prevent space cooling at high-capacity. Two-capacity heat pumps having this feature will typically have two sets of ratings, one with the feature disabled and one with the feature enabled. The indoor coil model number should reflect whether the ratings pertain to the lockout enabled option via the inclusion of an extra identifier, such as "+LO." When testing as a two-capacity, northern heat pump, the lockout feature must remain enabled for all tests.

1.47 Wet-coil test means a test conducted at test conditions that typically cause water vapor to condense on the test unit evaporator coil.

2. Testing Conditions

This test procedure covers split-type and single-packaged ducted units and split-type non-ducted units. Except for units having a variable-speed compressor, ducted units tested without an indoor fan installed are covered.

a. Only a subset of the sections listed in this test procedure apply when testing and rating a particular unit. Tables 1–A through 1–C show which sections of the test procedure apply to each type of equipment. In each table, look at all four of the Roman numeral categories to see what test sections apply to the equipment being tested.

1. The first category, Rows I–1 through I–4 of the Tables, pertains to the compressor and indoor fan features of the equipment. After identifying the correct "I" row, find the table cells in the same row that list the type of equipment being tested: Air conditioner (AC), heat pump (HP), or heating-only heat pump (HH). Use the test section(s) listed above each noted table cell for testing and rating the unit.

2. The second category, Rows II–1 and II–2, pertains to the presence or absence of ducts. Row II–1 shows the test procedure sections that apply to ducted systems, and Row II–2 shows those that apply to non-ducted systems.

3. The third category is for special features that may be present in the equipment. When testing units that have one or more of the three (special) equipment features described by the Table legend for Category III, use Row III to find test sections that apply.

4. The fourth category is for the secondary test method to be used. If the secondary method for determining the unit's cooling and/or heating capacity is known, use Row IV to find the appropriate test sections. Otherwise, include all of the test sections referenced by Row IV cell entries—*i.e.*, sections 2.10 to 2.10.3 and 3.11 to 3.11.3—among those sections consulted for testing and rating information.

b. Obtain a complete listing of all pertinent test sections by recording those sections identified from the four categories above.

c. The user should note that, for many sections, only part of a section applies to the unit being tested. In a few cases, the entire section may not apply. For example, sections 3.4 to 3.5.3 (which describe optional dry coil tests), are not relevant if the allowed default value for the cooling mode cyclic degradation coefficient is used rather than determining it by testing.

Example for Using Tables 1–A to 1–C

Equipment Description: A ducted air conditioner having a single-speed compressor, a fixed-speed indoor fan, and a multi-speed outdoor fan.

Secondary Test Method: Refrigerant Enthalpy Method

Step 1. Determine which of four listed Row "I" options applies ==> Row I–2

Table 1–A: "AC" in Row I–2 is found in the columns for sections 1.1 to 1.47, 2.1 to 2.2, 2.2.4 to 2.2.4.1. 2.2.5, 2.3 to 2.3.1, 2.4 to 2.4.1, 2.5, 2.5.2 to 2.10, and 2.11 to 2.13.

Table 1–B: "AC" is listed in Row I–2 for sections 3 to 3.1.4, 3.1.5 to 3.1.8, 3.2.1, 3.3 to 3.5, 3.5.3, 3.11 and 3.12.

Table 1–C: "AC" is listed in Row I–2 for sections 4.1.1 and 4.4.

Step 2. Equipment is ducted ==> Row II–1

Table 1–A: "AC" is listed in Row II–1 for sections 2.4.2 and 2.5.1 to 2.5.1.2.

Table 1–B: "AC" is listed in Row II–1 for sections 3.1.4.1 to 3.1.4.1.1 and 3.5.1.

Table 1–C: no "AC" listings in Row II–1.

Step 3. Equipment Special Features include multi-speed outdoor fan ==> Row III, M

Table 1–A: "M" is listed in Row III for section 2.2.2

Tables 1–B and 1–C: no "M" listings in Row III.

Step 4. Secondary Test Method is Refrigerant Enthalpy Method ==> Row IV, R

Table 1–A: "R" is listed in Row IV for section 2.10.3

Table 1–B: "R" is listed in Row IV for section 3.11.3

Table 1–C: no "R" listings in Row IV.

Step 5. Cumulative listing of applicable test procedure sections 1.1 to 1.47, 2.1 to 2.2, 2.2.2, 2.2.4 to 2.4.1, 2.2.5, 2.3 to 2.3.1, 2.4 to 2.4.1, 2.4.2, 2.5, 2.5.1 to 2.5.1.2, 2.5.2 to 2.10, 2.10.3, 2.11 to 2.13, 3. to 3.1.4, 3.1.4.1 to 3.1.4.1.1, 3.1.5 to 3.1.8, 3.2.1, 3.3 to 3.5, 3.5.1, 3.5.3, 3.11, 3.11.3, 3.12, 4.1.1, and 4.4.

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Table 1A. Selection of Test Procedure Sections: Section 1 (Definitions) and Section 2 (Testing Conditions)

Key Equipment Features and Secondary Test Method \ Sections From the Test Procedure	1.1 to 1.47	2.1 to 2.2	2.2.1	2.2.2	2.2.3	2.2.4 to 2.2.4.1	2.2.4.2	2.2.5	2.3 to 2.3.1	2.3.2	2.4 to 2.4.1	2.4.2	2.5	2.5.1 to 2.5.1.2	2.5.2 to 2.10	2.10.1	2.10.2	2.10.3	2.11 to 2.13
I-1, Single-speed Compressor; Variable-Speed Variable Air Volume Indoor Fan	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
I-2. Single-speed Compressor Except as Covered by "I-1"	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
I-3. Two-capacity Compressor	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
I-4. Variable-speed Compressor	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
II-1. Ducted												AC HP HH		AC HP HH					
II-2. Non-Ducted																			
III. Special Features				M	G														
IV. Secondary Test Method																O	C	R	

Legend for Table Entries:

Categories I and II: AC = applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion
HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion

Category III: G = ganged mini-splits or multi-splits;
H = heat pump with a heat comfort controller;
M = units with a multi-speed outdoor fan.

Category IV: O = Outdoor Air Enthalpy Method; C = Compressor Calibration Method; R = Refrigerant Enthalpy Method

Table 1B. Selection of Test Procedure Sections: Section 3 (Testing Procedures)

Key Equipment Features and Secondary Test Method \ Sections From the Test Procedure	3. to 3.1.4	3.1.4.1 to 3.1.4.1.1	3.1.4.1.2	3.1.4.2	3.1.4.3	3.1.4.4 to 3.1.4.4.2	3.1.4.4.3	3.1.4.4.4	3.1.4.5	3.1.4.6 to 3.1.4.7	3.1.5 to 3.1.8	3.1.9	3.2.1	3.2.2 to 3.2.2.2	3.2.3	3.2.4	3.3 to 3.5	3.5.1	3.5.2	3.5.3
I-1. Single-speed Compressor; Variable-speed, Variable Air Volume Indoor Fan	AC HP HH			AC HP					HP HH		AC HP HH	HP HH		AC HP			AC HP			AC HP
I-2. Single-speed Compressor Except as Covered by "I-1"	AC HP HH										AC HP HH	HP HH	AC HP				AC HP			AC HP
I-3. Two-capacity Compressor	AC HP HH			AC HP					HP HH		AC HP HH	HP HH			AC HP		AC HP			AC HP
I-4. Variable-speed Compressor	AC HP HH			AC HP	AC HP				HP HH	HP HH	AC HP HH	HP HH				AC HP	AC HP			AC HP
II-1. Ducted		AC HP				HP	HH											AC HP		
II-2. Non-Ducted			AC HP					HP HH											AC HP	
III. Special Features												H								
IV. Secondary Test Method																				

Legend for Table Entries:

Categories I and II: AC = applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion
HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion

Category III: G = ganged mini-splits or multi-splits;
H = heat pump with a heat comfort controller;
M = units with a multi-speed outdoor fan.

Category IV: O = Outdoor Air Enthalpy Method; C = Compressor Calibration Method; R = Refrigerant Enthalpy Method

Table 1B. Selection of Test Procedure Sections: Section 3 (Testing Procedures) (continued)

Key Equipment Features and Secondary Test Method \ Sections From the Test Procedure	3.6.1	3.6.2	3.6.3	3.6.4	3.6.5	3.7 to 3.8.1	3.9 to 3.10	3.11	3.11.1 to 3.11.1.3	3.11.2	3.11.3	3.12
I-1. Single-speed Compressor; Variable-speed, Variable Air Volume Indoor Fan		HP HH				HP HH	HP HH	AC HP HH				AC HP HH
I-2. Single-speed Compressor Except as Covered by "I-1"	HP HH					HP HH	HP HH	AC HP HH				AC HP HH
I-3. Two-capacity Compressor			HP HH			HP HH	HP HH	AC HP HH				AC HP HH
I-4. Variable-speed Compressor				HP HH		HP HH	HP HH	AC HP HH				AC HP HH
II-1. Ducted												
II-2. Non-Ducted												
III. Special Features					H							
IV: Secondary Test Method									O	C	R	

Legend for Table Entries:

Categories I and II: AC = applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion
HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion

Category III: G = ganged mini-splits or multi-splits;
H = heat pump with a heat comfort controller;
M = units with a multi-speed outdoor fan.

Category IV: O = Outdoor Air Enthalpy Method; C = Compressor Calibration Method; R = Refrigerant Enthalpy Method

Table 1C. Selection of Test Procedure Sections: Section 4 (Calculations of Seasonal Performance Descriptors)													
Key Equipment Features and Secondary Test Method \ Sections From the Test Procedure	4 to 4.1	4.1.1	4.1.2 to 4.1.2.2	4.1.3 to 4.1.3.4	4.1.4 to 4.1.4.3	4.2	4.2.1	4.2.2	4.2.3 to 4.2.3.4	4.2.4 to 4.2.4.3	4.2.5 to 4.2.5.4	4.3 to 4.3.2	4.4
I-1. Single-speed Compressor; Variable-speed Variable Air Volume Indoor Fan	AC HP		AC HP			HP HH		HP HH				HP	AC HP HH
I-2. Single-speed Compressor Except as Covered by "I-1"		AC HP				HP HH	HP HH					HP	AC HP HH
I-3. Two-capacity Compressor	AC HP			AC HP		HP HH			HP HH			HP	AC HP HH
I-4. Variable-speed Compressor	AC HP				AC HP	HP HH				HP HH		HP	AC HP HH
II-1. Ducted													
II-2. Non-Ducted													
III. Special Features						H					H		
IV. Secondary Test Method													

Legend for Table Entries:

Categories I and II: AC = applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion

HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion

HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion

Category III: G = ganged mini-splits or multi-splits;

H = heat pump with a heat comfort controller;

M = units with a multi-speed outdoor fan.

Category IV: O = Outdoor Air Enthalpy Method; C = Compressor Calibration Method; R = Refrigerant Enthalpy Method

2.1 Test room requirements. a. Test using two side-by-side rooms, an indoor test room and an outdoor test room. These rooms must comply with the requirements specified in sections 8.1.2 and 8.1.3 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22).

b. Inside these test rooms, use artificial loads during cyclic tests and frost accumulation tests, if needed, to produce stabilized room air temperatures. For one room, select an electric resistance heater(s) having a heating capacity that is approximately equal to the heating capacity of the test unit's condenser. For the second room, select a heater(s) having a capacity that is close to the sensible cooling capacity of the test unit's evaporator. When applied, cycle the heater located in the same room as the test unit evaporator coil ON and OFF when the test unit cycles ON and OFF. Cycle the heater located in the same room as the test unit condensing coil ON and OFF when the test unit cycles OFF and ON.

2.2 Test unit installation requirements. a. Install the unit according to section 8.6 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). With respect to interconnecting tubing used when testing split systems, however, follow the requirements given in section 6.1.3.5 of ARI Standard 210/240–2003 (incorporated by reference, see § 430.22). When testing triple-split systems (see Definition 1.44), use the tubing length specified in section 6.1.3.5 of ARI Standard 210/240–2003 (incorporated by reference, see § 430.22) to connect the outdoor coil, indoor compressor section, and indoor coil while still meeting the requirement of exposing 10 feet of the tubing to outside conditions. When testing non-ducted systems having multiple indoor coils, connect each indoor fan-coil to the outdoor unit using: a. 25 feet of tubing, or b. tubing furnished by the manufacturer, whichever is longer. If they are needed to make a secondary measurement of capacity, install refrigerant pressure measuring instruments as described in section 8.6.5 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). Refer to section 2.10 of this Appendix to learn which secondary methods require refrigerant pressure measurements. At a minimum, insulate the low pressure line(s) of a split system with foam insulation having an inside diameter that matches the refrigerant tubing and a nominal thickness of ½ inch.

b. For units designed for both horizontal and vertical installation or for both up-flow and down-flow vertical installations, the manufacturer must specify the orientation used for testing. Conduct testing with the following installed:

(1) The most restrictive filter(s);

(2) Supplementary heating coils; and

(3) Other equipment specified as part of the unit, including all hardware used by a heat comfort controller if so equipped (see Definition 1.28).

c. Testing a ducted unit without having an indoor air filter installed is permissible as long as the minimum external static pressure requirement is adjusted as stated in Table 2, note 3 (see section 3.1.4). Except as noted in section 3.1.9, prevent the indoor air supplementary heating coils from operating during all tests. For coil-only indoor units that are supplied without an enclosure, create an enclosure using 1 inch fiberglass ductboard having a nominal density of 6 pounds per cubic foot. Or alternatively, use some other insulating material having a thermal resistance ("R" value) between 4 and 6 hr·ft^2·°F/Btu. For units where the coil is housed within an enclosure or cabinet, no extra insulating or sealing is allowed.

2.2.1 Defrost control settings. Set heat pump defrost controls at the normal settings which most typify those encountered in generalized climatic region IV. (Refer to Figure 2 and Table 17 of section 4.2 for information on region IV.) For heat pumps that use a time-adaptive defrost control system (see Definition 1.42), the manufacturer must specify the frosting interval to be used during Frost Accumulation tests and provide the procedure for manually initiating the defrost at the specified time. To ease testing of any unit, the manufacturer should provide information and any necessary hardware to manually initiate a defrost cycle.

2.2.2 Special requirements for units having a multiple-speed outdoor fan. Configure the multiple-speed outdoor fan according to the manufacturer's specifications, and thereafter, leave it unchanged for all tests. The controls of the unit must regulate the operation of the outdoor fan during all lab tests except dry coil cooling mode tests. For dry coil cooling mode tests, the outdoor fan must operate at the same speed used during the required wet coil test conducted at the same outdoor test conditions.

2.2.3 Special requirements for multi-split air conditioners and heat pumps, and systems composed of multiple mini-split units (outdoor units located side-by-side) that would normally operate using two or more indoor thermostats. During the steady-state tests, shunt all thermostats to make all indoor fan-coil units operate simultaneously. To ease the testing burden of cyclic tests, consider creating a single control circuit that allows simultaneous cycling of all compressor systems. For these systems, the test procedure references to a single indoor fan, outdoor fan, and compressor means all indoor fans, all outdoor fans, and all compressor systems.

2.2.4 Wet-bulb temperature requirements for the air entering the indoor and outdoor coils.

2.2.4.1 Cooling mode tests. For wet-coil cooling mode tests, regulate the water vapor content of the air entering the indoor unit to the applicable wet-bulb temperature listed in Tables 3 to 6. As noted in these same tables, achieve a wet-bulb temperature during dry-coil cooling mode tests that results in no condensate forming on the indoor coil. Controlling the water vapor content of the air entering the outdoor side of the unit is not required for cooling mode tests except when testing:

(1) Units that reject condensate to the outdoor coil during wet coil tests. Tables 3–6 list the applicable wet-bulb temperatures.

(2) Single-packaged units where all or part of the indoor section is located in the outdoor test room. The average dew point temperature of the air entering the outdoor coil during wet coil tests must be within ±3.0°F of the average dew point temperature of the air entering the indoor coil over the 30-minute data collection interval described in section 3.3. For dry coil tests on such units, it may be necessary to limit the moisture content of the air entering the outdoor side of the unit to meet the requirements of section 3.4.

2.2.4.2 Heating mode tests. For heating mode tests, regulate the water vapor content of the air entering the outdoor unit to the applicable wet-bulb temperature listed in Tables 9 to 12. The wet-bulb temperature entering the indoor side of the heat pump must not exceed 60°F. Additionally, if the Outdoor Air Enthalpy test method is used while testing a single-packaged heat pump where all or part of the outdoor section is located in the indoor test room, adjust the wet-bulb temperature for the air entering the indoor side to yield an indoor-side dew point temperature that is as close as reasonably possible to the dew point temperature of the outdoor-side entering air.

2.2.5 Additional refrigerant charging requirements. Charging according to the "manufacturer's instructions," as stated in section 8.6 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22), means the manufacturer's installation instructions that come packaged with the unit. If a unit requires charging but the installation instructions do not specify a charging procedure, then evacuate the unit and add the nameplate refrigerant charge. Where the manufacturer's installation instructions contain two sets of refrigerant charging criteria, one for field installations and one for lab testing, use the field installation criteria. For third-party testing, the test laboratory may consult with the manufacturer about the refrigerant charging procedure and make any needed corrections so long as they do not contradict the published installation instructions. The manufacturer may specify an alternative charging criteria to the third-party laboratory so long as the manufacturer thereafter revises the published installation instructions accordingly.

2.3 Indoor air volume rates. If a unit's controls allow for overspeeding the indoor fan (usually on a temporary basis), take the necessary steps to prevent overspeeding during all tests.

2.3.1 Cooling tests. a. Set indoor fan control options (e.g., fan motor pin settings, fan motor speed) according to the published installation instructions that are provided with the equipment while meeting the airflow requirements that are specified in sections 3.1.4.1 to 3.1.4.3.

b. Express the Cooling Certified Air Volume Rate, the Cooling Minimum Air Volume Rate, and the Cooling Intermediate Air Volume Rate in terms of standard air.

2.3.2 Heating tests. a. If needed, set the indoor fan control options (e.g., fan motor pin settings, fan motor speed) according to the published installation instructions that are provided with the equipment. Do this set-up while meeting all applicable airflow requirements specified in sections 3.1.4.4 to 3.1.4.7.

b. Express the Heating Certified Air Volume Rate, the Heating Minimum Air Volume Rate, the Heating Intermediate Air Volume Rate, and the Heating Nominal Air Volume Rate in terms of standard air.

2.4 Indoor coil inlet and outlet duct connections. Insulate and/or construct the outlet plenum described in section 2.4.1 and, if installed, the inlet plenum described in section 2.4.2 with thermal insulation having a nominal overall sistance (R-value) of at least 19 hr·ft^2·°F/Btu.

2.4.1 Outlet plenum for the indoor unit. Attach a plenum to the outlet of the indoor coil. (Note: for some packaged systems, the indoor coil may be located in the outdoor test room.) For non-ducted systems having multiple indoor coils, attach a plenum to each indoor coil outlet. Add a static pressure tap to each face of the (each) outlet plenum, if rectangular, or at four evenly distributed locations along the circumference of an oval or round plenum. Create a manifold that connects the four static pressure taps. Figure 1 shows two of the three options allowed for the manifold configuration; the third option is the broken-ring, four-to-one manifold configuration that is shown in Figure 7 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). See Figures 7 and 8 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) for the cross-sectional dimensions and minimum length of the (each) plenum and the locations for adding the static pressure taps for units tested with and without an indoor fan installed. For a non-ducted system having multiple indoor coils, have all outlet plenums discharge air into a single common duct. At the plane where each plenum enters the common duct, install an adjustable airflow damper and use it to equalize the static pressure in each plenum.

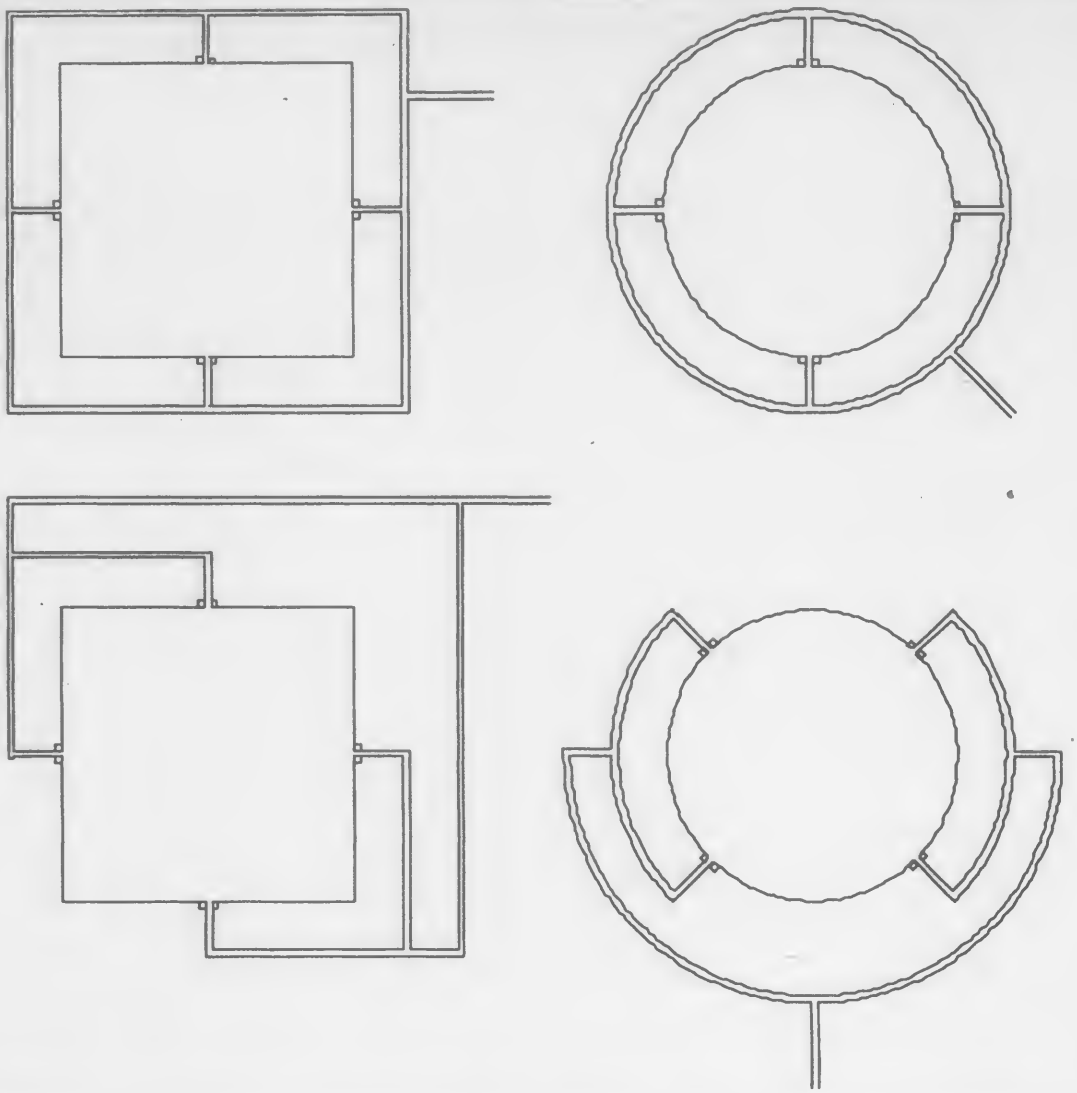

Figure 1. Configurations for manifolding the static pressure taps. The top two diagrams show the complete ring, four-to-one configuration. The lower two diagrams show the triple-T configuration.

2.4.2 Inlet plenum for the indoor unit. Install an inlet plenum when testing a coil-only indoor unit or a packaged system where the indoor coil is located in the outdoor test room. Add static pressure taps at the center of each face of this plenum, if rectangular, or at four evenly distributed locations along the circumference of an oval or round plenum. Make a manifold that connects the four static pressure taps using one of the three configurations specified in section 2.4.1. See Figure 8 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) for cross-sectional dimensions, the minimum length of the inlet plenum, and the locations of the static pressure taps. When testing a ducted unit having an indoor fan (and the indoor coil is in the indoor test room), the manufacturer has the option to test with or without an inlet plenum installed. Space limitations within the test room may dictate that the manufacturer choose the latter option. If used, construct the inlet plenum and add the four static pressure taps as shown in Figure 8 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). Manifold the four static pressure taps using one of the three configurations specified in section 2.4.1. Never use an inlet plenum when testing a non-ducted system.

2.5 Indoor coil air property measurements and air damper box applications. a. Measure the dry-bulb temperature and water vapor content of the air entering and leaving the indoor coil. If needed, use an air sampling device to divert air to a sensor(s) that measures the water vapor content of the air. See Figure 2 of ASHRAE Standard 41.1–86 (RA 01) (incorporated by reference, see § 430.22) for guidance on constructing an air sampling device. The sampling device may also divert air to a remotely located sensor(s) that measures dry bulb temperature. The air sampling device and the remotely located temperature sensor(s) may be used to determine the entering air dry bulb temperature during any test. The air sampling device and the remotely located leaving air dry bulb temperature sensor(s) may be used for all tests except:

(1) Cyclic tests; and

(2) Frost accumulation tests.

b. An acceptable alternative in all cases, including the two special cases noted above, is to install a grid of dry bulb temperature sensors within the outlet and inlet ducts. Use a temperature grid to get the average dry bulb temperature at one location, leaving or entering, or when two grids are applied as a thermopile, to directly obtain the temperature difference. A grid of temperature sensors (which may also be used for determining average leaving air dry bulb temperature) is required to measure the temperature distribution within a cross-section of the leaving airstream.

c. Use an inlet and outlet air damper box when testing ducted systems if conducting one or both of the cyclic tests listed in sections 3.2 and 3.6. Otherwise, install an outlet air damper box when testing heat pumps, both ducted and non-ducted, that cycle off the indoor fan during defrost cycles if no other means is available for preventing natural or forced convection through the indoor unit when the indoor fan is off. Never use an inlet damper box when testing a non-ducted system.

2.5.1 Test set-up on the inlet side of the indoor coil: for cases where the inlet damper box is installed. a. Install the inlet side damper box as specified in section 2.5.1.1 or 2.5.1.2, whichever applies. Insulate or construct the ductwork between the point where the air damper is installed and where the connection is made to either the inlet plenum (section 2.5.1.1 units) or the indoor unit (section 2.5.1.2 units) with thermal insulation that has a nominal overall resistance (R-value) of at least 19 hr·ft^{2}·°F/Btu.

b. Locate the grid of entering air dry-bulb temperature sensors, if used, at the inlet of the damper box. Locate the air sampling device, or the sensor used to measure the water vapor content of the inlet air, at a location immediately upstream of the damper box inlet.

2.5.1.1 If the section 2.4.2 inlet plenum is installed. Install the inlet damper box upstream of the inlet plenum. The cross-sectional flow area of the damper box must be equal to or greater than the flow area of the inlet plenum. If needed, use an adaptor plate or a transition duct section to connect the damper box with the inlet plenum.

2.5.1.2 If the section 2.4.2 inlet plenum is not installed. Install the damper box immediately upstream of the air inlet of the indoor unit. The cross-sectional dimensions of the damper box must be equal to or greater than the dimensions of the indoor unit inlet. If needed, use an adaptor plate or a short transition duct section to connect the damper box with the unit's air inlet. Add static pressure taps at the center of each face of the damper box, if rectangular, or at four evenly distributed locations along the circumference, if oval or round. Locate the pressure taps between the inlet damper and the inlet of the indoor unit. Make a manifold that connects the four static pressure taps.

2.5.2 Test set-up on the inlet side of the indoor unit: for cases where no inlet damper box is installed. If using the section 2.4.2 inlet plenum and a grid of dry bulb temperature sensors, mount the grid at a location upstream of the static pressure taps described in section 2.4.2, preferably at the entrance plane of the inlet plenum. If the section 2.4.2 inlet plenum is not used, but a grid of dry bulb temperature sensors is used, locate the grid approximately 6 inches upstream from the inlet of the indoor coil. Or, in the case of non-ducted units having multiple indoor coils, locate a grid approximately 6 inches upstream from the inlet of each indoor coil. Position an air sampling device, or the sensor used to measure the water vapor content of the inlet air, immediately upstream of the (each) entering air dry-bulb temperature sensor grid. If a grid of sensors is not used, position the entering air sampling device (or the sensor used to measure the water vapor content of the inlet air) as if the grid were present.

2.5.3 Indoor coil static pressure difference measurement. Section 6.4.4.1 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) describes the method for fabricating static pressure taps. Also refer to Figure 2A of ASHRAE Standard 51–99/AMCA Standard 210–99 (incorporated by reference, see § 430.22). Use a differential pressure measuring instrument that is accurate to within ±0.01 inches of water and has a resolution of at least 0.01 inches of water to measure the static pressure difference between the indoor coil air inlet and outlet. Connect one side of the differential pressure instrument to the manifolded pressure taps installed in the outlet plenum. Connect the other side of the instrument to the manifolded pressure taps located in either the inlet plenum or incorporated within the air damper box. If an inlet plenum or inlet damper box are not used, leave the inlet side of the differential pressure instrument open to the surrounding atmosphere. For non-ducted systems that are tested with multiple outlet plenums, measure the static pressure within each outlet plenum relative to the surrounding atmosphere.

2.5.4 Test set-up on the outlet side of the indoor coil. a. Install an interconnecting duct between the outlet plenum described in section 2.4.1 and the airflow measuring apparatus described below in section 2.6. The cross-sectional flow area of the interconnecting duct must be equal to or greater than the flow area of the outlet plenum or the common duct used when testing non-ducted units having multiple indoor coils. If needed, use adaptor plates or transition duct sections to allow the connections. To minimize leakage, tape joints within the interconnecting duct (and the outlet plenum). Construct or insulate the entire flow section with thermal insulation having a nominal overall resistance (R-value) of at least 19 hr·ft^{2}·°F/Btu.

b. Install a grid(s) of dry-bulb temperature sensors inside the interconnecting duct. Also, install an air sampling device, or the sensor(s) used to measure the water vapor content of the outlet air, inside the interconnecting duct. Locate the dry-bulb temperature grid(s) upstream of the air sampling device (or the in-duct sensor(s) used to measure the water vapor content of the outlet air). Air that circulates through an air sampling device and past a remote water-vapor-content sensor(s) must be returned to the interconnecting duct at a point:

(1) Downstream of the air sampling device;

(2) Upstream of the outlet air damper box, if installed; and

(3) Upstream of the section 2.6 airflow measuring apparatus.

2.5.4.1 Outlet air damper box placement and requirements. If using an outlet air damper box (see section 2.5), install it within the interconnecting duct at a location downstream of the location where air from the sampling device is reintroduced or downstream of the in-duct sensor that measures water vapor content of the outlet air. The leakage rate from the combination of the outlet plenum, the closed damper, and the duct section that connects these two components must not exceed 20 cubic feet per minute when a negative pressure of 1 inch of water column is maintained at the plenum's inlet.

2.5.4.2 Procedures to minimize temperature maldistribution. Use these procedures if necessary to correct

temperature maldistributions. Install a mixing device(s) upstream of the outlet air, dry-bulb temperature grid (but downstream of the outlet plenum static pressure taps). Use a perforated screen located between the mixing device and the dry-bulb temperature grid, with a maximum open area of 40 percent. One or both items should help to meet the maximum outlet air temperature distribution specified in section 3.1.8. Mixing devices are described in sections 6.3—6.5 of ASHRAE Standard 41.1–86 (RA 01) (incorporated by reference, see § 430.22) and section 5.2.2 of ASHRAE Standard 41.2–87 (RA 92) (incorporated by reference, see § 430.22).

2.5.5 Dry bulb temperature measurement. a. Measure dry bulb temperatures as specified in sections 4, 5, 6.1–6.10, 9, 10, and 11 of ASHRAE Standard 41.1–86 (RA 01) (incorporated by reference, see § 430.22). The transient testing requirements cited in section 4.3 of ASHRAE Standard 41.1–86 (RA 01) (incorporated by reference, see § 430.22) apply if conducting a cyclic or frost accumulation test.

b. Distribute the sensors of a dry-bulb temperature grid over the entire flow area. The required minimum is 9 sensors per grid.

2.5.6 Water vapor content measurement. Determine water vapor content by measuring dry-bulb temperature combined with the air wet-bulb temperature, dew point temperature, or relative humidity. If used, construct and apply wet-bulb temperature sensors as specified in sections 4, 5, 6, 9, 10, and 11 of ASHRAE Standard 41.1–86 (RA 01) (incorporated by reference, see § 430.22). As specified in ASHRAE 41.1–86 (RA 01) (incorporated by reference, see § 430.22), the temperature sensor (wick removed) must be accurate to within ±0.2 °F. If used, apply dew point hygrometers as specified in sections 5 and 8 of ASHRAE Standard 41.6–94 (RA 01) (incorporated by reference, see § 430.22). The dew point hygrometers must be accurate to within ±0.4 °F when operated at conditions that result in the evaluation of dew points above 35 °F. If used, a relative humidity (RH) meter must be accurate to within ±0.7% RH. Other means to determine the psychrometric state of air may be used as long as the measurement accuracy is equivalent to or better than the accuracy achieved from using a wet-bulb temperature sensor that meets the above specifications.

2.5.7 Air damper box performance requirements. If used (see section 2.5), the air damper box(es) must be capable of being completely opened or completely closed within 10 seconds for each action.

2.6 Airflow measuring apparatus. a. Fabricate and operate an Air Flow Measuring Apparatus as specified in section 6.6 of ASHRAE Standard 116–95 (incorporated by reference, see § 430.22). Refer to Figure 12 of ASHRAE Standard 51–99/AMCA Standard 210–99 (incorporated by reference, see § 430.22) or Figure 14 of ASHRAE Standard 41.2–87 (RA 92) (incorporated by reference, see § 430.22) for guidance on placing the static pressure taps and positioning the diffusion baffle (settling means) relative to the chamber inlet.

b. Connect the airflow measuring apparatus to the interconnecting duct section described in section 2.5.4. See sections 6.1.1, 6.1.2, and 6.1.4, and Figures 1, 2, and 4 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22), and Figures D1, D2, and D4 of ARI Standard 210/240–2003 (incorporated by reference, see § 430.22) for illustrative examples of how the test apparatus may be applied within a complete laboratory set-up. Instead of following one of these examples, an alternative set-up may be used to handle the air leaving the airflow measuring apparatus and to supply properly conditioned air to the test unit's inlet. The alternative set-up, however, must not interfere with the prescribed means for measuring airflow rate, inlet and outlet air temperatures, inlet and outlet water vapor contents, and external static pressures, nor create abnormal conditions surrounding the test unit. (Note: Do not use an enclosure as described in section 6.1.3 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) when testing triple-split units.)

2.7 Electrical voltage supply. Perform all tests at the voltage specified in section 6.1.3.2 of ARI Standard 210/240–2003 (incorporated by reference, see § 430.22) for "Standard Rating Tests." Measure the supply voltage at the terminals on the test unit using a volt meter that provides a reading that is accurate to within ±1.0 percent of the measured quantity.

2.8 Electrical power and energy measurements. a. Use an integrating power (watt-hour) measuring system to determine the electrical energy or average electrical power supplied to all components of the air conditioner or heat pump (including auxiliary components such as controls, transformers, crankcase heater, integral condensate pump on non-ducted indoor units, etc.). The watt-hour measuring system must give readings that are accurate to within ±0.5 percent. For cyclic tests, this accuracy is required during both the ON and OFF cycles. Use either two different scales on the same watt-hour meter or two separate watt-hour meters. Activate the scale or meter having the lower power rating within 15 seconds after beginning an OFF cycle. Activate the scale or meter having the higher power rating active within 15 seconds prior to beginning an ON cycle. For ducted units tested with a fan installed, the ON cycle lasts from compressor ON to indoor fan OFF. For ducted units tested without an indoor fan installed, the ON cycle lasts from compressor ON to compressor OFF. For non-ducted units, the ON cycle lasts from indoor fan ON to indoor fan OFF. When testing air conditioners and heat pumps having a variable-speed compressor, avoid using an induction watt/watt-hour meter.

b. When performing section 3.5 and/or 3.8 cyclic tests on non-ducted units, provide instrumentation to determine the average electrical power consumption of the indoor fan motor to within ±1.0 percent. If required according to sections 3.3, 3.4, 3.7, 3.9.1, and/or 3.10, this same instrumentation requirement applies when testing air conditioners and heat pumps having a variable-speed constant-air-volume-rate indoor fan or a variable-speed, variable-air-volume-rate indoor fan.

2.9 Time measurements. Make elapsed time measurements using an instrument that yields readings accurate to within ±0.2 percent.

2.10 Test apparatus for the secondary space conditioning capacity measurement. For all tests, use the Indoor Air Enthalpy Method to measure the unit's capacity. This method uses the test set-up specified in sections 2.4 to 2.6. In addition, for all steady-state tests, conduct a second, independent measurement of capacity as described in section 3.1.1. For split systems, use one of the following secondary measurement methods: Outdoor Air Enthalpy Method, Compressor Calibration Method, or Refrigerant Enthalpy Method. For single packaged units, use either the Outdoor Air Enthalpy Method or the Compressor Calibration Method as the secondary measurement.

2.10.1 Outdoor Air Enthalpy Method. a. To make a secondary measurement of indoor space conditioning capacity using the Outdoor Air Enthalpy Method, do the following:

(1) Measure the electrical power consumption of the test unit;

(2) Measure the air-side capacity at the outdoor coil; and

(3) Apply a heat balance on the refrigerant cycle.

b. The test apparatus required for the Outdoor Air Enthalpy Method is a subset of the apparatus used for the Indoor Air Enthalpy Method. Required apparatus includes the following:

(1) An outlet plenum containing static pressure taps (sections 2.4, 2.4.1, and 2.5.3),

(2) An airflow measuring apparatus (section 2.6),

(3) A duct section that connects these two components and itself contains the instrumentation for measuring the dry-bulb temperature and water vapor content of the air leaving the outdoor coil (sections 2.5.4, 2.5.5, and 2.5.6), and

(4) On the inlet side, a sampling device and optional temperature grid (sections 2.5 and 2.5.2).

c. During the preliminary tests described in sections 3.11.1 and 3.11.1.1, measure the evaporator and condenser temperatures or pressures. On both the outdoor coil and the indoor coil, solder a thermocouple onto a return bend located at or near the midpoint of each coil or at points not affected by vapor superheat or liquid subcooling. Alternatively, if the test unit is not sensitive to the refrigerant charge, connect pressure gages to the access valves or to ports created from tapping into the suction and discharge lines. Use this alternative approach when testing a unit charged with a zeotropic refrigerant having a temperature glide in excess of 1 °F at the specified test conditions.

2.10.2 Compressor Calibration Method. Measure refrigerant pressures and temperatures to determine the evaporator superheat and the enthalpy of the refrigerant that enters and exits the indoor coil. Determine refrigerant flow rate or, when the superheat of the refrigerant leaving the evaporator is less than 5 °F, total capacity from separate calibration tests conducted under identical operating conditions. When using this method, install instrumentation, measure refrigerant properties, and adjust the

refrigerant charge according to section 7.4.2 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). Use refrigerant temperature and pressure measuring instruments that meet the specifications given in sections 5.1.1 and 5.2 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22).

2.10.3 Refrigerant Enthalpy Method. For this method, calculate space conditioning capacity by determining the refrigerant enthalpy change for the indoor coil and directly measuring the refrigerant flow rate. Use section 7.6.2 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) for the requirements for this method, including the additional instrumentation requirements, and information on placing the flow meter and a sight glass. Use refrigerant temperature, pressure, and flow measuring instruments that meet the specifications given in sections 5.1.1, 5.2, and 5.5.1 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22).

2.11 Measurement of test room ambient conditions. a. If using a test set-up where air is ducted directly from the conditioning apparatus to the indoor coil inlet (see Figure 2, Loop Air-Enthalpy Test Method Arrangement, of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22)), add instrumentation to permit measurement of the indoor test room dry-bulb temperature.

b. If the Outdoor Air Enthalpy Method is not used, add instrumentation to measure the dry-bulb temperature and the water vapor content of the air entering the outdoor coil. If an air sampling device is used, construct and apply the device as per section 6 of ASHRAE Standard 41.1–86 (RA 01) (incorporated by reference, see § 430.22). Take steps (*e.g.*, add or re-position a lab circulating fan), as needed, to minimize the magnitude of the temperature distribution non-uniformity. Position any fan in the outdoor test room while trying to keep air velocities in the vicinity of the test unit below 500 feet per minute.

c. Measure dry bulb temperatures as specified in sections 4, 5, 6.1–6.10, 9, 10, and 11 of ASHRAE Standard 41.1–86 (RA 01) (incorporated by reference, see § 430.22). Measure water vapor content as stated above in section 2.5.6.

2.12 Measurement of indoor fan speed. When required, measure fan speed using a revolution counter, tachometer, or stroboscope that gives readings accurate to within ±1.0 percent.

2.13 Measurement of barometric pressure. Determine the average barometric pressure during each test. Use an instrument that meets the requirements specified in section 5.2 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22).

3. Testing Procedures

3.1 General Requirements. If, during the testing process, an equipment set-up adjustment is made that would alter the performance of the unit when conducting an already completed test, then repeat all tests affected by the adjustment. For cyclic tests, instead of maintaining an air volume rate, for each airflow nozzle, maintain the static pressure difference or velocity pressure during an ON period at the same pressure difference or velocity pressure as measured during the steady-state test conducted at the same test conditions.

3.1.1 Primary and secondary test methods. For all tests, use the Indoor Air Enthalpy Method test apparatus to determine the unit's space conditioning capacity. The procedure and data collected, however, differ slightly depending upon whether the test is a steady-state test, a cyclic test, or a frost accumulation test. The following sections described these differences. For all steady-state tests (*i.e.*, the A, A_2, A_1, B, B_2, B_1, C, C_1, EV, F_1, G_1, $H0_1$, H_1, $H1_2$, $H1_1$, HI_N, H_3, $H3_2$, and $H3_1$ Tests), in addition, use one of the acceptable secondary methods specified in section 2.10 to determine indoor space conditioning capacity. Calculate this secondary check of capacity according to section 3.11. The two capacity measurements must agree to within 6 percent to constitute a valid test. For this capacity comparison, use the Indoor Air Enthalpy Method capacity that is calculated in section 7.3 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) (and do not make the after-test fan heat adjustments described in sections 3.3, 3.4, 3.7, and 3.10 of this Appendix). However, include the appropriate section 3.3 to 3.5 and 3.7 to 3.10 fan heat adjustments within the Indoor Air Enthalpy Method capacities used for the section 4 seasonal calculations.

3.1.2 Manufacturer-provided equipment overrides. Where needed, the manufacturer must provide a means for overriding the controls of the test unit so that the compressor(s) operates at the specified speed or capacity and the indoor fan operates at the specified speed or delivers the specified air volume rate.

3.1.3 Airflow through the outdoor coil. For all tests, meet the requirements given in section 6.1.3.4 of ARI Standard 210/240–2003 (incorporated by reference, see § 430.22) when obtaining the airflow through the outdoor coil.

3.1.4 Airflow through the indoor coil.

3.1.4.1 Cooling Certified Air Volume Rate.

3.1.4.1.1 Cooling Certified Air Volume Rate for Ducted Units. The manufacturer must specify the Cooling Certified Air Volume Rate. Use this value as long as the following two requirements are satisfied. First, when conducting the A or A_2 Test (exclusively), the measured air volume rate, when divided by the measured indoor air-side total cooling capacity, must not exceed 37.5 cubic feet per minute of standard air (scfm) per 1000 Btu/h. If this ratio is exceeded, reduce the air volume rate until this ratio is equaled. Use this reduced air volume rate for all tests that call for using the Cooling Certified Air Volume Rate. The second requirement is as follows:

a. For ducted units that are tested with a fixed-speed, multi-speed, or variable-speed variable-air-volume-rate indoor fan installed. For the A or A_2 Test (exclusively), the measured external static pressure must be equal to or greater than the applicable minimum external static pressure cited in Table 2. If the Table 2 minimum is not equaled or exceeded, incrementally change the set-up of the indoor fan (*e.g.*, fan motor pin settings, fan motor speed) until the Table 2 requirement is met while maintaining the same air volume rate. If the indoor fan set-up changes cannot provide the minimum external static, then reduce the air volume rate until the correct Table 2 minimum is equaled. For the last scenario, use the reduced air volume rate for all tests that require the Cooling Certified Air Volume Rate.

b. For ducted units that are tested with a constant-air-volume-rate indoor fan installed. For all tests that specify the Cooling Certified Air Volume Rate, obtain an external static pressure as close to (but not less than) the applicable Table 2 value that does not cause instability or an automatic shutdown of the indoor blower.

c. For ducted units that are tested without an indoor fan installed. For the A or A_2 Test, (exclusively), the pressure drop across the indoor coil assembly must not exceed 0.30 inches of water. If this pressure drop is exceeded, reduce the air volume rate until the measured pressure drop equals the specified maximum. Use this reduced air volume rate for all tests that require the Cooling Certified Air Volume Rate.

TABLE 2.—MINIMUM EXTERNAL STATIC PRESSURE FOR DUCTED SYSTEMS TESTED WITH AN INDOOR FAN INSTALLED

Rated Cooling [1] or Heating [2] Capacity (Btu/h)	Minimum External Resistance [3] (Inches of Water)
Up Thru 28,800	0.10
29,000 to 42,500	0.15
43,000 and Above	0.20

[1] For air conditioners and heat pumps, the value cited by the manufacturer in published literature for the unit's capacity when operated at the A or A_2 Test conditions.

[2] For heating-only heat pumps, the value the manufacturer cites in published literature for the unit's capacity when operated at the H1 or $H1_2$ Test conditions.

[3] For ducted units tested without an air filter installed, increase the applicable tabular value by 0.08 inches of water.

3.1.4.1.2 Cooling Certified Air Volume Rate for Non-ducted Units. For non-ducted units, the Cooling Certified Air Volume Rate is the air volume rate that results during each test when the unit is operated at an external static pressure of zero inches of water.

3.1.4.2 Cooling Minimum Air Volume Rate. a. For ducted units that regulate the speed (as opposed to the cfm) of the indoor fan,

$$\text{Cooling Minimum Air Vol. Rate} = \text{Cooling Certified Air Vol. Rate} \times \frac{\text{Cooling Minimum Fan Speed}}{A_2 \text{ Test Fan Speed}},$$

where "Cooling Minimum Fan Speed" corresponds to the fan speed used when operating at low compressor capacity (two-capacity system), the fan speed used when operating at the minimum compressor speed (variable-speed system), or the lowest fan speed used when cooling (single-speed compressor and a variable-speed variable-air-volume-rate indoor fan). For such systems, obtain the Cooling Minimum Air Volume Rate regardless of the external static pressure.

b. For ducted units that regulate the air volume rate provided by the indoor fan, the manufacturer must specify the Cooling Minimum Air Volume Rate. For such systems, conduct all tests that specify the Cooling Minimum Air Volume Rate—(*i.e.*, the A_1, B_1, C_1, F_1, and G_1 Tests)—at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$A_1,\ B_1,\ C_1,\ F_1,\ \&\ G_1 \text{ Test } \Delta P_{st} = \Delta P_{st,A_2} \times \left[\frac{\text{Cooling Minimum Air Volume Rate}}{\text{Cooling Certified Air Volume Rate}}\right]^2,$$

where $\Delta P_{st,A_2}$ is the applicable Table 2 minimum external static pressure that was targeted during the A_2 (and B_2) Test.

c. For ducted two-capacity units that are tested without an indoor fan installed, the Cooling Minimum Air Volume Rate is the higher of (1) the rate specified by the manufacturer or (2) 75 percent of the Cooling Certified Air Volume Rate. During the laboratory tests on a coil-only (fanless) unit, obtain this Cooling Minimum Air Volume Rate regardless of the pressure drop across the indoor coil assembly.

d. For non-ducted units, the Cooling Minimum Air Volume Rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water and at the indoor fan setting used at low compressor capacity (two-capacity system) or minimum compressor speed (variable-speed system). For units having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan, use the lowest fan setting allowed for cooling.

3.1.4.3 Cooling Intermediate Air Volume Rate. a. For ducted units that regulate the speed of the indoor fan,

$$\text{Cooling Intermediate Air Volume Rate} = \text{Cooling Certified Air Volume Rate} \times \frac{E_v \text{ Test Fan Speed}}{A_2 \text{ Test Fan Speed}}.$$

For such units, obtain the Cooling Intermediate Air Volume Rate regardless of the external static pressure.

b. For ducted units that regulate the air volume rate provided by the indoor fan, the manufacturer must specify the Cooling Intermediate Air Volume Rate. For such systems, conduct the E_V Test at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$E_v \text{ Test } \Delta P_{st} = \Delta P_{st,A_2} \times \left[\frac{\text{Cooling Intermediate Air Volume Rate}}{\text{Cooling Certified Air Volume Rate}}\right]^2,$$

where $\Delta P_{st,A_2}$ is the applicable Table 2 minimum external static pressure that was targeted during the A_2 (and B_2) Test.

c. For non-ducted units, the Cooling Intermediate Air Volume Rate is the air volume rate that results when the unit operates at an external static pressure of zero inches of water and at the fan speed selected by the controls of the unit for the E_V Test conditions.

3.1.4.4 Heating Certified Air Volume Rate.

3.1.4.4.1 Ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are the same. a. Use the Cooling Certified Air Volume Rate as the Heating Certified Air Volume Rate for:

1. Ducted heat pumps that operate at the same indoor fan speed during both the A (or A_2) and the H1 (or $H1_2$) Tests;

2. Ducted heat pumps that regulate fan speed to deliver the same constant air volume rate during both the A (or A_2) and the H1 (or $H1_2$) Tests; and

3. Ducted heat pumps that are tested without an indoor fan installed (except two-capacity northern heat pumps that are tested only at low capacity cooling—see 3.1.4.4.2).

b. For heat pumps that meet the above criteria "1" and "3," no minimum requirements apply to the measured external or internal, respectively, static pressure. For heat pumps that meet the above criterion "2," test at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than, the same Table 2 minimum external static pressure as was specified for the A (or A_2) cooling mode test.

3.1.4.4.2 Ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are different due to indoor fan operation. a. For ducted heat pumps that regulate the speed (as opposed to the cfm) of the indoor fan,

$$\text{Heating Certified Air Volume Rate} = \text{Cooling Certified Air Volume Rate} \times \frac{\text{H1 or H1}_2 \text{ Test Fan Speed}}{\text{A or A}_2 \text{ Test Fan Speed}}.$$

For such heat pumps, obtain the Heating Certified Air Volume Rate without regard to the external static pressure.

b. For ducted heat pumps that regulate the air volume rate delivered by the indoor fan, the manufacturer must specify the Heating Certified Air Volume Rate. For such heat pumps, conduct all tests that specify the Heating Certified Air Volume Rate at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$\text{Heating Certified } \Delta P_{st} = \text{Cooling Certified } \Delta P_{st} \times \left[\frac{\text{Heating Certified Air Volume Rate}}{\text{Cooling Certified Air Volume Rate}}\right]^2$$

where the Cooling Certified ΔP_{st} is the applicable Table 2 minimum external static pressure that was specified for the A or A_2 Test.

c. When testing ducted, two-capacity northern heat pumps (see Definition 1.46), use the appropriate approach of the above two cases for units that are tested with an indoor fan installed. For coil-only (fanless) northern heat pumps, the Heating Certified Air Volume Rate is the lesser of the rate specified by the manufacturer or 133 percent of the Cooling Certified Air Volume Rate. For this latter case, obtain the Heating Certified Air Volume Rate regardless of the pressure drop across the indoor coil assembly.

3.1.4.4.3 Ducted heating-only heat pumps. The manufacturer must specify the Heating Certified Air Volume Rate. Use this value when the following two requirements are satisfied. First, when conducting the H1 or $H1_2$ Test (exclusively), the measured air volume rate, when divided by the measured indoor air-side total heating capacity, must not exceed 37.5 cubic feet per minute of standard air (scfm) per 1000 Btu/h. If this ratio is exceeded, reduce the air volume rate until this ratio is equaled. Use this reduced air volume rate for all tests of heating-only heat pumps that call for the Heating Certified Air Volume Rate. The second requirement is as follows:

a. For heating-only heat pumps that are tested with a fixed-speed, multi-speed, or variable-speed variable-air-volume-rate indoor fan installed. For the H1 or $H1_2$ Test (exclusively), the measured external static pressure must be equal to or greater than the Table 2 minimum external static pressure that applies given the heating-only heat pump's rated heating capacity. If the Table 2 minimum is not equaled or exceeded, incrementally change the set-up of the indoor fan until the Table 2 requirement is met while maintaining the same air volume rate. If the indoor fan set-up changes cannot provide the necessary external static pressure, then reduce the air volume rate until the correct Table 2 minimum is equaled. For the last scenario, use the reduced air volume rate for all tests that require the Heating Certified Air Volume Rate.

b. For ducted heating-only heat pumps having a constant-air-volume-rate indoor fan. For all tests that specify the Heating Certified Air Volume Rate, obtain an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than, the applicable Table 2 minimum.

c. For ducted heating-only heat pumps that are tested without an indoor fan installed. For the H1 or $H1_2$ Test, (exclusively), the pressure drop across the indoor coil assembly must not exceed 0.30 inches of water. If this pressure drop is exceeded, reduce the air volume rate until the measured pressure drop equals the specified maximum. Use this reduced air volume rate for all tests that require the Heating Certified Air Volume Rate.

3.1.4.4.4 Non-ducted heat pumps, including non-ducted heating-only heat pumps. For non-ducted heat pumps, the Heating Certified Air Volume Rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water.

3.1.4.5 Heating Minimum Air Volume Rate. a. For ducted heat pumps that regulate the speed (as opposed to the cfm) of the indoor fan,

$$\text{Heating Minimum Air Volume Rate} = \text{Heating Certified Air Volume Rate} \times \frac{\text{Heating Minimum Fan Speed}}{H1_2 \text{ Test Fan Speed}}$$

where "Heating Minimum Fan Speed" corresponds to the fan speed used when operating at low compressor capacity (two-capacity system), the lowest fan speed used at any time when operating at the minimum compressor speed (variable-speed system), or the lowest fan speed used when heating (single-speed compressor and a variable-speed variable-air-volume-rate indoor fan). For such heat pumps, obtain the Heating Minimum Air Volume Rate without regard to the external static pressure.

b. For ducted heat pumps that regulate the air volume rate delivered by the indoor fan, the manufacturer must specify the Heating Minimum Air Volume Rate. For such heat pumps, conduct all tests that specify the Heating Minimum Air Volume Rate—(*i.e.*, the $H0_1$, $H1_1$, $H2_1$, and $H3_1$ Tests)—at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$H0_1,\ H1_1,\ H2_1,\ H3_1,\ \text{Test } \Delta P_{st} = \Delta P_{st,H1_2} \times \left[\frac{\text{Htg Minimum Air Vol. Rate}}{\text{Htg Certified Air Vol. Rate}}\right]^2,$$

where $\Delta P_{st,H1_2}$

is the minimum external static pressure that was targeted during the $H1_2$ Test.

c. For ducted two-capacity northern heat pumps that are tested with an indoor fan installed, use the appropriate approach of the above two cases.

d. For ducted two-capacity heat pumps that are tested without an indoor fan installed, use the Cooling Minimum Air Volume Rate as the Heating Minimum Air Volume Rate. For ducted two-capacity northern heat pumps that are tested without an indoor fan installed, use the Cooling Certified Air Volume Rate as the Heating Minimum Air Volume Rate. For ducted two-capacity heating-only heat pumps that are tested without an indoor fan installed, the Heating Minimum Air Volume Rate is the higher of the rate specified by the manufacturer or 75 percent of the Heating Certified Air Volume Rate. During the laboratory tests on a coil-only (fanless) unit, obtain the Heating Minimum Air Volume Rate without regard to the pressure drop across the indoor coil assembly.

e. For non-ducted heat pumps, the Heating Minimum Air Volume Rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water and at the indoor fan setting used at low compressor capacity (two-capacity system) or minimum compressor speed (variable-speed system). For units having a single-speed compressor and a variable-speed, variable-air-volume-rate

indoor fan, use the lowest fan setting allowed for heating.

3.1.4.6 Heating Intermediate Air Volume Rate. a. For ducted heat pumps that regulate the speed of the indoor fan,

$$\text{Heating Intermediate Air Volume Rate} = \text{Heating Certified Air Volume Rate} \times \frac{\text{H2}_V\ \text{Test Fan Speed}}{\text{H1}_2\ \text{Test Fan Speed}}.$$

For such heat pumps, obtain the Heating Intermediate Air Volume Rate without regard to the external static pressure.

b. For ducted heat pumps that regulate the air volume rate delivered by the indoor fan, the manufacturer must specify the Heating Intermediate Air Volume Rate. For such heat pumps, conduct the $H2_V$ Test at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$\text{H2}_V\ \text{Test}\ \Delta P_{st} = \Delta P_{st,H1_2} \times \left[\frac{\text{Heating Intermediate Air Volume Rate}}{\text{Heating Certified Air Volume Rate}}\right]^2,$$

where $\Delta P_{st,H1_2}$ is the minimum external static pressure that was specified for the $H1_2$ Test.

c. For non-ducted heat pumps, the Heating Intermediate Air Volume Rate is the air volume rate that results when the heat pump operates at an external static pressure of zero inches of water and at the fan speed selected by the controls of the unit for the $H2_V$ Test conditions.

3.1.4.7 Heating Nominal Air Volume Rate. Except for the noted changes, determine the Heating Nominal Air Volume Rate using the approach described in section 3.1.4.6. Required changes include substituting "$H1_N$ Test" for "$H2_V$ Test" within the first section 3.1.4.6 equation, substituting "$H1_N$ Test ΔP_{st}" for "$H2_V$ Test ΔP_{st}" in the second section 3.1.4.6 equation, substituting "$H1_N$ Test" for each "$H2_V$ Test", and substituting "Heating Nominal Air Volume Rate" for each "Heating Intermediate Air Volume Rate."

$$\text{Heating Nominal Air Volume Rate} = \text{Heating Certified Air Volume Rate} \times \frac{\text{H1}_N\ \text{Test Fan Speed}}{\text{H1}_2\ \text{Test Fan Speed}}.$$

$$\text{H1}_N\ \text{Test}\ \Delta P_{st} = \Delta P_{st,H1_2} \times \left[\frac{\text{Heating Nominal Air Volume Rate}}{\text{Heating Certified Air Volume Rate}}\right]^2.$$

3.1.5 Indoor test room requirement when the air surrounding the indoor unit is not supplied from the same source as the air entering the indoor unit. If using a test set-up where air is ducted directly from the air reconditioning apparatus to the indoor coil inlet (see Figure 2, Loop Air-Enthalpy Test Method Arrangement, of ASHRAE Standard 37–88) (incorporated by reference, see § 430.22), maintain the dry bulb temperature within the test room within ±5.0 °F of the applicable sections 3.2 and 3.6 dry bulb temperature test condition for the air entering the indoor unit.

3.1.6 Air volume rate calculations. For all steady-state tests and for frost accumulation ($H2$, $H2_1$, $H2_2$, $H2_V$) tests, calculate the air volume rate through the indoor coil as specified in sections 7.8.3.1 and 7.8.3.2 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). When using the Outdoor Air Enthalpy Method, follow sections 7.8.3.1 and 7.8.3.2 to calculate the air volume rate through the outdoor coil. To express air volume rates in terms of standard air, use:

$$\overline{V}_s = \frac{\overline{V}_{mx}}{0.075\ \frac{\text{lbm}_{da}}{\text{ft}^3} \cdot v_n' \cdot [1 + W_n]} = \frac{\overline{V}_{mx}}{0.075\ \frac{\text{lbm}_{da}}{\text{ft}^3} \cdot v_n} \qquad (3\text{-}1)$$

where,

$\overline{V}_s$ = air volume rate of standard (dry) air, $(\text{ft}^3/\text{min})_{da}$

$\overline{V}_{mx}$ = air volume rate of the air-water vapor mixture, $(\text{ft}^3/\text{min})_{mx}$

v_n' = specific volume of air-water vapor mixture at the nozzle, ft^3 per lbm of the air-water vapor mixture

W_n = humidity ratio at the nozzle, lbm of water vapor per lbm of dry air

0.075 = the density associated with standard (dry) air, (lbm/ft^3)

v_n = specific volume of the dry air portion of the mixture evaluated at the dry-bulb temperature, vapor content, and barometric pressure existing at the nozzle, ft^3 per lbm of dry air.

3.1.7 Test sequence. When testing a ducted unit (except if a heating-only heat pump), conduct the A or A_2 Test first to establish the Cooling Certified Air Volume Rate. For ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are different, make the first heating mode test one that requires the Heating Certified Air Volume Rate. For ducted heating-only heat pumps, conduct the H1 or $H1_2$ Test first to establish the Heating Certified Air Volume Rate. When conducting an optional cyclic test, always conduct it immediately after the steady-state test that requires the same test conditions. For variable-speed systems, the first test using the Cooling Minimum Air Volume Rate should precede the E_V Test if one expects to adjust the indoor fan control options when preparing for the first Minimum Air Volume Rate test. Under the same circumstances, the first test using the Heating Minimum Air Volume Rate should precede the $H2_V$ Test. The test laboratory makes all other decisions on the test sequence.

3.1.8 Requirement for the air temperature distribution leaving the indoor coil. For at least the first cooling mode test and the first heating mode test, monitor the temperature distribution of the air leaving the indoor coil using the grid of individual sensors described in sections 2.5 and 2.5.4. For the 30-minute data collection interval used to determine capacity, the maximum spread among the

outlet dry bulb temperatures from any data sampling must not exceed 1.5 °F. Install the mixing devices described in section 2.5.4.2 to minimize the temperature spread.

3.1.9 Control of auxiliary resistive heating elements. Except as noted, disable heat pump resistance elements used for heating indoor air at all times, including during defrost cycles and if they are normally regulated by a heat comfort controller. For heat pumps equipped with a heat comfort controller, enable the heat pump resistance elements only during the below-described, short test. For single-speed heat pumps covered under section 3.6.1, the short test follows the H1 or, if conducted, the H1C Test. For two-capacity heat pumps and heat pumps covered under section 3.6.2, the short test follows the $H1_2$ Test. Set the heat comfort controller to provide the maximum supply air temperature. With the heat pump operating and while maintaining the Heating Certified Air Volume Rate, measure the temperature of the air leaving the indoor-side beginning 5 minutes after activating the heat comfort controller. Sample the outlet dry-bulb temperature at regular intervals that span 5 minutes or less. Collect data for 10 minutes, obtaining at least 3 samples. Calculate the average outlet temperature over the 10-minute interval, T_{CC}.

3.2 Cooling mode tests for different types of air conditioners and heat pumps.

3.2.1 Tests for a unit having a single-speed compressor that is tested with a fixed-speed indoor fan installed, with a constant-air-volume-rate indoor fan installed, or with no indoor fan installed. Conduct two steady-state wet coil tests, the A and B Tests. Use the two optional dry-coil tests, the steady-state C Test and the cyclic D Test, to determine the cooling mode cyclic degradation coefficient, C_D^c. If the two optional tests are not conducted, assign C_D^c the default value of 0.25. Table 3 specifies test conditions for these four tests.

TABLE 3.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED-SPEED INDOOR FAN, A CONSTANT AIR VOLUME RATE INDOOR FAN, OR NO INDOOR FAN

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A Test—required (steady, wet coil)	80	67	95	[1] 75	Cooling certified [2]
B Test—required (steady, wet coil)	80	67	82	[1] 65	Cooling certified [2]
C Test—optional (steady, dry coil)	80	[3]	82	.....	Cooling certified [2]
D Test—optional (cyclic, dry coil)	80	[3]	82	.....	[4]

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1.
[3] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. (It is recommended that an indoor wet-bulb temperature of 57 °F or less be used.)
[4] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C Test.

3.2.2 Tests for a unit having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan installed.

3.2.2.1 Indoor fan capacity modulation that correlates with the outdoor dry bulb temperature. Conduct four steady-state wet coil tests: The A_2, A_1, B_2, and B_1 Tests. Use the two optional dry-coil tests, the steady-state C_1 Test and the cyclic D_1 Test, to determine the cooling mode cyclic degradation coefficient, C_D^c. If the two optional tests are not conducted, assign C_D^c the default value of 0.25. Table 4 specifies test conditions for these six tests.

3.2.2.2 Indoor fan capacity modulation based on adjusting the sensible to total (S/T) cooling capacity ratio. The testing requirements are the same as specified in section 3.2.1 and Table 3. Use a Cooling Certified Air Volume Rate that represents a normal residential installation. If performed, conduct the steady-state C Test and the cyclic D Test with the unit operating in the same S/T capacity control mode as used for the B Test.

TABLE 4.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A VARIABLE AIR VOLUME RATE INDOOR FAN THAT CORRELATES WITH THE OUTDOOR DRY BULB TEMPERATURE (SEC. 3.2.2.1)

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A_2 Test—required (steady, wet coil)	80	67	95	[1] 75	Cooling certified [2]
A_1 Test—required (steady, wet coil)	80	67	95	[1] 75	Cooling minimum [3]
B_2 Test—required (steady, wet coil)	80	67	82	[1] 65	Cooling certified [2]
B_1 Test—required (steady, wet coil)	80	67	82	[1] 65	Cooling minimum [3]
C_1 Test [4]—optional (steady, dry coil)	80	[4]	82	.....	Cooling minimum [3]
D_1 Test [4]—optional (cyclic, dry coil)	80	[4]	82	.....	[5]

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1.
[3] Defined in section 3.1.4.2.
[4] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. (It is recommended that an indoor wet-bulb temperature of 57 °F or less be used.)
[5] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C_1 Test.

3.2.3 Tests for a unit having a two-capacity compressor. (See Definition 1.45.) a. Conduct four steady-state wet coil tests: The A_2, A_1, B_2, and B_1 Tests. Use the two optional dry-coil tests, the steady-state C_1 Test and the cyclic D_1 Test, to determine the cooling mode cyclic degradation coefficient, C_D^c. If the two optional tests are not conducted, assign C_D^c the default value of 0.25. Table 5 specifies test conditions for these six tests.

b. For units having a variable speed indoor fan that is modulated to adjust the sensible to total (S/T) cooling capacity ratio, use Cooling Certified and Cooling Minimum Air Volume Rates that represent a normal residential installation. Additionally, if conducting the optional dry-coil tests,

operate the unit in the same S/T capacity control mode as used for the B_1 Test.

c. Test two-capacity, northern heat pumps (see Definition 1.46) in the same way as a single speed heat pump with the unit operating exclusively at low compressor capacity (see section 3.2.1 and Table 3).

d. If a two-capacity air conditioner or heat pump locks out low capacity operation at outdoor temperatures that are less than 95 °F, conduct the A_1 Test using the outdoor temperature conditions listed for the F_1 Test in Table 6 rather than using the outdoor temperature conditions listed in Table 5 for the A_1 Test.

TABLE 5.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A_2 Test—required (steady, wet coil)	80	67	95	[1] 75	High	Cooling Certified [2]
A_1 Test—required (steady, wet coil)	80	67	95	[1] 75	Low	Cooling Minimum [3]
B_2 Test—required (steady, wet coil)	80	67	82	[1] 65	High	Cooling Certified [2]
B_1 Test—required (steady, wet coil)	80	67	82	[1] 65	Low	Cooling Minimum [3]
C_1 Test [4]—optional (steady, dry coil)	80	([4])	82	.....	Low	Cooling Minimum [3]
D_1 Test [4]—optional (cyclic, dry coil)	80	([4])	82	.....	Low	([5])

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1.
[3] Defined in section 3.1.4.2.
[4] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. (It is recommended that an indoor wet-bulb temperature of 57 °F or less be used.)
[5] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C_1 Test.

3.2.4 Tests for a unit having a variable-speed compressor. a. Conduct five steady-state wet coil tests: The A_2, E_V, B_2, B_1, and F_1 Tests. Use the two optional dry-coil tests, the steady-state G_1 Test and the cyclic I_1 Test, to determine the cooling mode cyclic degradation coefficient, C_D^c. If the two optional tests are not conducted, assign C_D^c the default value of 0.25. Table 6 specifies test conditions for these seven tests. Determine the intermediate compressor speed cited in Table 6 using:

$$\text{Intermediate speed} = \text{Minimum speed} + \frac{\text{Maximum speed} - \text{Minimum speed}}{3}$$

where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

b. For units that modulate the indoor fan speed to adjust the sensible to total (S/T) cooling capacity ratio, use Cooling Certified, Cooling Intermediate, and Cooling Minimum Air Volume Rates that represent a normal residential installation. Additionally, if conducting the optional dry-coil tests, operate the unit in the same S/T capacity control mode as used for the F_1 Test.

TABLE 6.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Compressor speed	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A_2 Test—required (steady, wet coil)	80	67	95	[1] 75	Maximum	Cooling Certified [2]
B_2 Test—required (steady, wet coil)	80	67	82	[1] 65	Maximum	Cooling Certified [2]
E_V Test—required (steady, wet coil)	80	67	87	[1] 69	Intermediate	Cooling Intermediate [3]
B_1 Test—required (steady, wet coil)	80	67	82	[1] 65	Minimum	Cooling Minimum [4]
F_1 Test—required (steady, wet coil)	80	67	67	[1] 53.5	Minimum	Cooling Minimum [4]
G_1 Test [5]—optional (steady, dry coil)	80	([5])	67	.....	Minimum	Cooling Minimum [4]
I_1 Test [5]—optional (cyclic, dry coil)	80	([5])	67	.....	Minimum	([6])

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1.
[3] Defined in section 3.1.4.3.
[4] Defined in section 3.1.4.2.
[5] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. (It is recommended that an indoor wet-bulb temperature of 57 °F or less be used.)
[6] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the G_1 Test.

3.3 Test procedures for steady-state wet coil cooling mode tests (the A, A_2, A_1, B, B_2, B_1, E_V, and F_1 Tests). a. For the pretest interval, operate the test room reconditioning apparatus and the unit to be tested until maintaining equilibrium conditions for at least 30 minutes at the specified section 3.2 test conditions. Use the exhaust fan of the airflow measuring apparatus and, if installed, the indoor fan of the test unit to obtain and then maintain the indoor air volume rate and/or external static pressure specified for

the particular test. Continuously record (see Definition 1.15):

(1) The dry-bulb temperature of the air entering the indoor coil,

(2) The water vapor content of the air entering the indoor coil,

(3) The dry-bulb temperature of the air entering the outdoor coil, and

(4) For the section 2.2.4 cases where its control is required, the water vapor content of the air entering the outdoor coil.

Refer to section 3.11 for additional requirements that depend on the selected secondary test method.

b. After satisfying the pretest equilibrium requirements, make the measurements specified in Table 5 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) for the Indoor Air Enthalpy method and the user-selected secondary method. Except for external static pressure, make the Table 5 measurements at equal intervals that span 10 minutes or less. Measure external static pressure every 5 minutes or less. Continue data sampling until reaching a 30-minute period (*e.g.*, four consecutive 10-minute samples) where the test tolerances specified in Table 7 are satisfied. For those continuously recorded parameters, use the entire data set from the 30-minute interval to evaluate Table 7 compliance. Determine the average electrical power consumption of the air conditioner or heat pump over the same 30-minute interval.

c. Calculate indoor-side total cooling capacity as specified in section 7.3.3.1 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). Do not adjust the parameters used in calculating capacity for the permitted variations in test conditions. Evaluate air enthalpies based on the measured barometric pressure. Assign the average total space cooling capacity and electrical power consumption over the 30-minute data collection interval to the variables $\dot{Q}_c^k(T)$ and $\dot{E}_c^k(T)$, respectively. For these two variables, replace the "T" with the nominal outdoor temperature at which the test was conducted. The superscript k is used only when testing multi-capacity units. Use the superscript k=2 to denote a test with the unit operating at high capacity or maximum speed, k=1 to denote low capacity or minimum speed, and k=v to denote the intermediate speed.

d. For units tested without an indoor fan installed, decrease $\dot{Q}_c^k(T)$ by

$$\frac{1250 \text{ Btu/h}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s,$$

and increase $\dot{E}_c^k(T)$ by,

$$\frac{365 \text{ W}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s,$$

where $\overline{\dot{V}}_s$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

TABLE 7.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.3 STEADY-STATE WET COIL COOLING MODE TESTS AND SECTION 3.4 DRY COIL COOLING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [2]
Indoor dry-bulb, °F		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F		
Entering temperature	1.0	[3] 0.3
Leaving temperature	[3] 1.0	
Outdoor dry-bulb, °F		
Entering temperature	2.0	0.5
Leaving temperature	[4] 2.0	
Outdoor wet-bulb, °F		
Entering temperature	1.0	[5] 0.3
Leaving temperature	[4] 1.0	
External resistance to airflow, inches of water	0.05	[6] 0.02
Electrical voltage, % of rdg.	2.0	1.5
Nozzle pressure drop, % of rdg.	2.0	

[1] See Definition 1.41.
[2] See Definition 1.40.
[3] Only applies during wet coil tests; does not apply during steady-state, dry coil cooling mode tests.
[4] Only applies when using the Outdoor Air Enthalpy Method.
[5] Only applies during wet coil cooling mode tests where the unit rejects condensate to the outdoor coil.
[6] Only applies when testing non-ducted units.

d. For air conditioners and heat pumps having a constant-air-volume-rate indoor fan, the five additional steps listed below are required if the average of the measured external static pressures exceeds the applicable sections 3.1.4 minimum (or target) external static pressure (ΔP_{min}) by 0.03 inches of water or more.

1. Measure the average power consumption of the indoor fan motor ($\dot{E}_{fan,1}$) and record the corresponding external static pressure (ΔP_1) during or immediately following the 30-minute interval used for determining capacity.

2. After completing the 30-minute interval and while maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

3. After re-establishing steady readings of the fan motor power and external static pressure, determine average values for the indoor fan power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

4. Approximate the average power consumption of the indoor fan motor at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}\left(\Delta P_{min} - \Delta P_1\right) + \dot{E}_{fan,1}.$$

5. Increase the total space cooling capacity, $\dot{Q}_c^k(T)$, by the quantity $(\dot{E}_{fan,1} - \dot{E}_{fan,min})$, when expressed on a Btu/h basis. Decrease the total electrical power, $\dot{E}_c^k(T)$, by the same fan power difference, now expressed in watts.

3.4 Test procedures for the optional steady-state dry coil cooling mode tests (the C, C_1, and G_1 Tests). a. Except for the modifications noted in this section, conduct the steady-state dry coil cooling mode tests as specified in section 3.3 for wet coil tests. Prior to recording data during the steady-state dry coil test, operate the unit at least one hour after achieving dry coil conditions. Drain the drain pan and plug the drain opening. Thereafter, the drain pan should remain completely dry.

b. Denote the resulting total space cooling capacity and electrical power derived from the test as $\dot{Q}_{ss,dry}$ and $\dot{E}_{ss,dry}(T)$. In preparing for the section 3.5 cyclic test, record the average indoor-side air volume rate, $\dot{V}$, specific heat of the air, $C_{p,a}$ (expressed on dry air basis), specific volume of the air at the nozzles, v'_n, humidity ratio at the nozzles, W_n, and either pressure difference or velocity pressure for the flow nozzles. For units having a variable-speed indoor fan (that provides either a constant or variable air volume rate) that will or may be tested during the cyclic dry coil cooling mode test with the indoor fan turned off (see section 3.5), include the electrical power used by the indoor fan motor among the recorded parameters from the 30-minute test.

3.5 Test procedures for the optional cyclic dry coil cooling mode tests (the D, D_1, and I_1 Tests). a. After completing the steady-state dry-coil test, remove the Outdoor Air Enthalpy method test apparatus, if connected, and begin manual OFF/ON cycling of the unit's compressor. The test set-up should otherwise be identical to the set-up used during the steady-state dry coil test. When testing heat pumps, leave the reversing valve during the compressor OFF cycles in the same position as used for the compressor ON cycles, unless automatically changed by the controls of the unit. For units having a variable-speed indoor fan, the manufacturer has the option of electing at the outset whether to conduct the cyclic test with the indoor fan enabled or disabled. Always revert to testing with the indoor fan disabled if cyclic testing with the fan enabled is unsuccessful.

b. For units having a single-speed or two-capacity compressor, cycle the compressor OFF for 24 minutes and then ON for 6 minutes ($\Delta\tau_{cyc,dry}$ = 0.5 hours). For units having a variable-speed compressor, cycle the compressor OFF for 48 minutes and then ON for 12 minutes ($\Delta\tau_{cyc,dry}$ = 1.0 hours). Repeat the OFF/ON compressor cycling pattern until the test is completed. Allow the controls of the unit to regulate cycling of the outdoor fan.

c. Sections 3.5.1 and 3.5.2 specify airflow requirements through the indoor coil of ducted and non-ducted systems, respectively. In all cases, use the exhaust fan of the airflow measuring apparatus (covered under section 2.6) along with the indoor fan of the unit, if installed and operating, to approximate a step response in the indoor coil airflow. Regulate the exhaust fan to quickly obtain and then maintain the flow nozzle static pressure difference or velocity pressure at the same value as was measured during the steady-state dry coil test. The pressure difference or velocity pressure should be within 2 percent of the value from the steady-state dry coil test within 15 seconds after airflow initiation. For units having a variable-speed indoor fan that ramps when cycling on and/or off, use the exhaust fan of the airflow measuring apparatus to impose a step response that begins at the initiation of ramp up and ends at the termination of ramp down.

d. For units having a variable-speed indoor fan, conduct the cyclic dry coil test using the pull-thru approach described below if any of the following occur when testing with the fan operating:

(1) The test unit automatically cycles off;

(2) Its blower motor reverses; or

(3) The unit operates for more than 30 seconds at an external static pressure that is 0.1 inches of water or more higher than the value measured during the prior steady-state test.

For the pull-thru approach, disable the indoor fan and use the exhaust fan of the airflow measuring apparatus to generate the specified flow nozzles static pressure difference or velocity pressure. If the exhaust fan cannot deliver the required pressure difference because of resistance created by the unpowered blower, temporarily remove the blower.

e. After completing a minimum of two complete compressor OFF/ON cycles, determine the overall cooling delivered and total electrical energy consumption during any subsequent data collection interval where the test tolerances given in Table 8 are satisfied. If available, use electric resistance heaters (see section 2.1) to minimize the variation in the inlet air temperature.

f. With regard to the Table 8 parameters, continuously record the dry-bulb temperature of the air entering the indoor and outdoor coils during periods when air flows through the respective coils. Sample the water vapor content of the indoor coil inlet air at least every 2 minutes during periods when air flows through the coil. Record external static pressure and the air volume rate indicator (either nozzle pressure difference or velocity pressure) at least every minute during the interval that air flows through the indoor coil. (These regular measurements of the airflow rate indicator are in addition to the required measurement at 15 seconds after flow initiation.) Sample the electrical voltage at least every 2 minutes beginning 30 seconds after compressor start-up. Continue until the compressor, the outdoor fan, and the indoor fan (if it is installed and operating) cycle off.

g. For ducted units, continuously record the dry-bulb temperature of the air entering (as noted above) and leaving the indoor coil. Or if using a thermopile, continuously record the difference between these two temperatures during the interval that air flows through the indoor coil. For non-ducted units, make the same dry-bulb temperature measurements beginning when the compressor cycles on and ending when indoor coil airflow ceases.

h. Integrate the electrical power over complete cycles of length $\Delta\tau_{cyc,dry}$. For ducted units tested with an indoor fan installed and operating, integrate electrical power from indoor fan OFF to indoor fan OFF. For all other ducted units and for non-ducted units, integrate electrical power from compressor OFF to compressor OFF. (Some cyclic tests will use the same data collection intervals to determine the electrical energy and the total space cooling. For other units, terminate data collection used to determine the electrical energy before terminating data collection used to determine total space cooling.)

TABLE 8.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR CYCLIC DRY COIL COOLING MODE TESTS

	Test Operating Tolerance [1]	Test Condition Tolerance [2]
Indoor entering dry-bulb temperature [3], °F	2.0	0.5
Indoor entering wet-bulb temperature, °F		[4]
Outdoor entering dry-bulb temperature [3], °F	2.0	0.5
External resistance to airflow [3], inches of water	0.05	
Airflow nozzle pressure difference or velocity pressure [3], % of reading	2.0	[5] 2.0
Electrical voltage [6], % of rdg.	2.0	1.5

[1] See Definition 1.41.

[2] See Definition 1.40.

[3] Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor fan that ramps, the tolerances listed for the external resistance to airflow apply from 30 seconds after achieving full speed until ramp down begins.

[4] Shall at no time exceed a wet-bulb temperature that results in condensate forming on the indoor coil.

[5] The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state dry coil test.

[6] Applies during the interval when at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor fan—are operating except for the first 30 seconds after compressor start-up.

i. If the Table 8 tolerances are satisfied over the complete cycle, record the measured electrical energy consumption as $e_{cyc,dry}$ and express it in units of watt-hours. Calculate the total space cooling delivered, $q_{cyc,dry}$, in units of Btu using,

$$q_{cyc,dry} = \frac{60 \cdot \bar{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{\left[v'_n \cdot (1 + W_n) \right]} = \frac{60 \cdot \bar{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{v_n} \qquad (3.5\text{-}1)$$

where $\bar{\dot{V}}$, $C_{p,a}$, v_n' (or v_n), and W_n are the values recorded during the section 3.4 dry coil steady-state test and,

$$\Gamma = \int_{\tau_1}^{\tau_2} \left[T_{a1}(\tau) - T_{a2}(\tau)\right] d\tau \text{, hr} \cdot {}^\circ\text{F}.$$

$T_{a1}(\tau)$ = dry bulb temperature of the air entering the indoor coil at time τ, °F.

$T_{a2}(\tau)$ = dry bulb temperature of the air leaving the indoor coil at time τ, °F.

τ_1 = for ducted units, the elapsed time when airflow is initiated through the indoor coil; for non-ducted units, the elapsed time when the compressor is cycled on, hr.

τ_2 = the elapsed time when indoor coil airflow ceases, hr.

3.5.1 Procedures when testing ducted systems. The automatic controls that are normally installed with the test unit must govern the OFF/ON cycling of the air moving equipment on the indoor side (exhaust fan of the airflow measuring apparatus and, if installed, the indoor fan of the test unit). For example, for ducted units tested without an indoor fan installed but rated based on using a fan time delay relay, control the indoor coil airflow according to the rated ON and/or OFF delays provided by the relay. For ducted units having a variable-speed indoor fan that has been disabled (and possibly removed), start and stop the indoor airflow at the same instances as if the fan were enabled. For all other ducted units tested without an indoor fan installed, cycle the indoor coil airflow in unison with the cycling of the compressor. Close air dampers on the inlet (section 2.5.1) and outlet side (sections 2.5 and 2.5.4) during the OFF period. Airflow through the indoor coil should stop within 3 seconds after the automatic controls of the test unit (act to) de-energize the indoor fan. For ducted units tested without an indoor fan installed (excluding the special case where a variable-speed fan is temporarily removed), increase $e_{cyc,dry}$ by the quantity,

$$\frac{365 \text{ W}}{1000 \text{ scfm}} \cdot \bar{V}_s \cdot \left[\tau_2 - \tau_1\right], \qquad (3.5\text{-}2)$$

and decrease $q_{cyc,dry}$ by,

$$\frac{1250 \text{ Btu/h}}{1000 \text{ scfm}} \cdot \bar{V}_s \cdot \left[\tau_2 - \tau_1\right], \qquad (3.5\text{-}3)$$

where $\bar{V}_s$ is the average indoor air volume rate from the section 3.4 dry coil steady-state test and is expressed in units of cubic feet per minute of standard air (scfm). For units having a variable-speed indoor fan that is disabled during the cyclic test, increase $e_{cyc,dry}$ and decrease $q_{cyc,dry}$ based on:

a. The product of $[\tau_2 - \tau_1]$ and the indoor fan power measured during or following the dry coil steady-state test; or,

b. The following algorithm if the indoor fan ramps its speed when cycling.

1. Measure the electrical power consumed by the variable-speed indoor fan at a minimum of three operating conditions: at the speed/air volume rate/external static pressure that was measured during the steady-state test, at operating conditions associated with the midpoint of the ramp-up interval, and at conditions associated with the midpoint of the ramp-down interval. For these measurements, the tolerances on the airflow volume or the external static pressure are the same as required for the section 3.4 steady-state test.

2. For each case, determine the fan power from measurements made over a minimum of 5 minutes.

3. Approximate the electrical energy consumption of the indoor fan if it had operated during the cyclic test using all three power measurements. Assume a linear profile during the ramp intervals. The manufacturer must provide the durations of the ramp-up and ramp-down intervals. If a manufacturer-supplied ramp interval exceeds 45 seconds, use a 45-second ramp interval nonetheless when estimating the fan energy.

The manufacturer is allowed to choose option a, and forego the extra testing burden of option b, even if the unit ramps indoor fan speed when cycling.

3.5.2 Procedures when testing non-ducted systems. Do not use air dampers when conducting cyclic tests on non-ducted units. Until the last OFF/ON compressor cycle, airflow through the indoor coil must cycle off and on in unison with the compressor. For the last OFF/ON compressor cycle—the one used to determine $e_{cyc,dry}$ and $q_{cyc,dry}$—use the exhaust fan of the airflow measuring apparatus and the indoor fan of the test unit to have indoor airflow start 3 minutes prior to compressor cut-on and end three minutes after compressor cutoff. Subtract the electrical energy used by the indoor fan during the 3 minutes prior to compressor cut-on from the integrated electrical energy, $e_{cyc,dry}$. Add the electrical energy used by the indoor fan during the 3 minutes after compressor cutoff to the integrated cooling capacity, $q_{cyc,dry}$. For the case where the non-ducted unit uses a variable-speed indoor fan which is disabled during the cyclic test, correct $e_{cyc,dry}$ and $q_{cyc,dry}$ using the same approach as prescribed in section 3.5.1 for ducted units having a disabled variable-speed indoor fan.

3.5.3 Cooling mode cyclic degradation coefficient calculation. Use two optional dry-coil tests to determine the cooling mode cyclic degradation coefficient, C_D^c. If the two optional tests are not conducted, assign C_D^c the default value of 0.25. Evaluate C_D^c using the above results and those from the section 3.4 dry coil steady-state test.

$$C_D^c = \frac{1 - \frac{EER_{cyc,dry}}{EER_{ss,dry}}}{1 - CLF}$$

where,

$$EER_{cyc,dry} = \frac{q_{cyc,dry}}{e_{cyc,dry}},$$

the average energy efficiency ratio during the cyclic dry coil cooling mode test, Btu/W·h

$$EER_{ss,dry} = \frac{\dot{Q}_{ss,dry}}{\dot{E}_{ss,dry}},$$

the average energy efficiency ratio during the steady-state dry coil cooling mode test, Btu/W·h

$$CLF = \frac{q_{cyc,dry}}{Q_{ss,dry} \cdot \Delta\tau_{cyc,dry}},$$

the cooling load factor dimensionless.

Round the calculated value for C_D^c to the nearest 0.01. If C_D^c is negative, then set it equal to zero.

3.6 Heating mode tests for different types of heat pumps, including heating-only heat pumps.

3.6.1 Tests for a heat pump having a single-speed compressor that is tested with a fixed speed indoor fan installed, with a constant-air-volume-rate indoor fan installed, or with no indoor fan installed. Conduct three tests: The High Temperature (H1) Test, the Frost Accumulation (H2) Test, and the Low Temperature (H3) Test. Conduct the optional High Temperature Cyclic (H1C) Test to determine the heating mode cyclic degradation coefficient, C_D^h. If this optional test is not conducted, assign C_D^h the default value of 0.25. Test conditions for these four tests are specified in Table 9.

TABLE 9.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED-SPEED INDOOR FAN, A CONSTANT AIR VOLUME RATE INDOOR FAN, OR NO INDOOR FAN

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H1 Test (required, steady)	70	60(max)	47	43	Heating Certified [1]
H1C Test (optional, cyclic)	70	60(max)	47	43	([2])
H2 Test (required)	70	60(max)	35	33	Heating Certified [1]
H3 Test (required, steady)	70	60(max)	17	15	Heating Certified [1]

[1] Defined in section 3.1.4.4.

[2] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the H1 Test.

3.6.2 Tests for a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan: capacity modulation correlates with outdoor dry bulb temperature. Conduct five tests: two High Temperature Tests ($H1_2$ and $H1_1$), one Frost Accumulation Test ($H2_2$), and two Low Temperature Tests ($H3_2$ and $H3_1$). Conducting an additional Frost Accumulation Test ($H2_1$) is optional. Conduct the optional High Temperature Cyclic ($H1C_1$) Test to determine the heating mode cyclic degradation coefficient, C_D^h. If this optional test is not conducted, assign C_D^h the default value of 0.25. Table 10 specifies test conditions for these seven tests. If the optional $H2_1$ Test is not done, use the following equations to approximate the capacity and electrical power of the heat pump at the $H2_1$ test conditions:

$$\dot{Q}_h^{k=1}(35) = QR_h^{k=2}(35)\cdot\left\{\dot{Q}_h^{k=1}(17) + 0.6\cdot\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)\right]\right\}$$

$$\dot{E}_h^{k=1}(35) = PR_h^{k=2}(35)\cdot\left\{\dot{E}_h^{k=1}(17) + 0.6\cdot\left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)\right]\right\}.$$

where,

$$\dot{Q}R_h^{k=2}(35) = \frac{\dot{Q}_h^{k=2}(35)}{\dot{Q}^{k=2}(17) + 0.6\cdot\left[\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right]}$$

$$PR_h^{k=2}(35) = \frac{\dot{E}_h^{k=2}(35)}{\dot{E}_h^{k=2}(17) + 0.6\cdot\left[\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17)\right]}.$$

The quantities $\dot{Q}_h^{k=2}(47)$, $\dot{E}_h^{k=2}(47)$, $\dot{Q}_h^{k=1}(47)$, and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_2$ and $H1_1$ Tests and evaluated as specified in section 3.7; the quantities $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ are determined from the $H2_2$ Test and evaluated as specified in section 3.9; and the quantities $\dot{Q}_h^{k=2}(17)$, $\dot{E}_h^{k=2}(17)$, $\dot{Q}_h^{k=1}(17)$, and $\dot{E}_h^{k=1}(17)$, are determined from the $H3_2$ and $H3_1$ Tests and evaluated as specified in section 3.10.

TABLE 10.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A VARIABLE AIR VOLUME RATE INDOOR FAN

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
$H1_2$ Test (required, steady)	70	60(max)	47	43	Heating Certified.[1]
$H1_1$ Test (required, steady)	70	60(max)	47	43	Heating Minimum.[2]
$H1C_1$ Test (optional, cyclic)	70	60(max)	47	43	([3])
$H2_2$ Test (required)	70	60(max)	35	33	Heating Certified.[1]
$H2_1$ Test (optional)	70	60(max)	35	33	Heating Minimum.[2]
$H3_2$ Test (required, steady)	70	60(max)	17	15	Heating Certified.[1]
$H3_1$ Test (required, steady)	70	60(max)	17	15	Heating Minimum.[2]

[1] Defined in section 3.1.4.4.
[2] Defined in section 3.1.4.5.
[3] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the $H1_1$ Test.

3.6.3 Tests for a heat pump having a two-capacity compressor (see Definition 1.45), including two-capacity, northern heat pumps (see Definition 1.46). a. Conduct one Maximum Temperature Test ($H0_1$), two High Temperature Tests ($H1_2$ and $H1_1$), one Frost Accumulation Test ($H2_2$), and one Low Temperature Test ($H3_2$). Conduct an additional Frost Accumulation Test ($H2_1$) and Low Temperature Test ($H3_1$) if both of the following conditions exist:

1. Knowledge of the heat pump's capacity and electrical power at low compressor capacity for outdoor temperatures of 37°F and less is needed to complete the section 4.2.3 seasonal performance calculations, and

2. The heat pump's controls allow low capacity operation at outdoor temperatures of 37°F and less.

b. Conduct the optional Maximum Temperature Cyclic Test ($H0C_1$) to determine the heating mode cyclic degradation coefficient, C_D^h. If this optional test is not conducted, assign C_D^h the default value of 0.25. Table 11 specifies test conditions for these eight tests.

TABLE 11.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Compressor capacity	Heating air volume rate
	Dry Bulb	Wet Bulb	Dry Bulb	Wet Bulb		
$H0_1$ Test (required, steady)	70	60(max)	62	56.5	Low	Heating Minimum [1]
$H0C_1$ Test (optional, cyclic)	70	60(max)	62	56.5	Low	([2])
$H1_2$ Test (required, steady)	70	60(max)	47	43	High	Heating Certified [3]

TABLE 11.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR—Continued

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Compressor capacity	Heating air volume rate
	Dry Bulb	Wet Bulb	Dry Bulb	Wet Bulb		
$H1_1$ Test (required, steady)	70	60(max)	47	43	Low	Heating Minimum [1]
$H2_2$ Test (required)	70	60(max)	35	33	High	Heating Certified [3]
$H2_1$ Test [4] (required)	70	60(max)	35	33	Low	Heating Minimum [1]
$H3_2$ Test (required, steady)	70	60(max)	17	15	High	Heating Certified [3]
$H3_1$ Test [4] (required, steady)	70	60(max)	17	15	Low	Heating Minimum [1]

[1] Defined in section 3.1.4.5.
[2] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the $H0_1$ Test.
[3] Defined in section 3.1.4.4.
[4] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the section 4.2.3 HSPF calculations.

3.6.4 Tests for a heat pump having a variable-speed compressor. a. Conduct one Maximum Temperature Test ($H0_1$), two High Temperature Tests ($H1_2$ and $H1_1$), one Frost Accumulation Test ($H2_V$), and one Low Temperature Test ($H3_2$). Conducting one or both of the following tests is optional: An additional High Temperature Test ($H1_N$) and an additional Frost Accumulation Test ($H2_2$). Conduct the optional Maximum Temperature Cyclic ($H0C_1$) Test to determine the heating mode cyclic degradation coefficient, C_D^h. If this optional test is not conducted, assign C_D^h the default value of 0.25. Table 12 specifies test conditions for these eight tests. Determine the intermediate compressor speed cited in Table 12 using the heating mode maximum and minimum compressors speeds and:

$$\text{Intermediate speed} = \text{Minimum speed} + \frac{\text{Maximum speed} - \text{Minimum speed}}{3}$$

where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed. If the $H2_2$ Test is not done, use the following equations to approximate the capacity and electrical power at the $H2_2$ test conditions:

$$\dot{Q}_h^{k=2}(35) = 0.90 \cdot \left\{ \dot{Q}_h^{k=2}(17) + 0.6 \cdot \left[\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17) \right] \right\}$$

$$\dot{E}_h^{k=2}(35) = 0.985 \cdot \left\{ \dot{E}_h^{k=2}(17) + 0.6 \cdot \left[\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17) \right] \right\}.$$

b. Determine the quantities $\dot{Q}_h^{k=2}(47)$ and from $\dot{E}_h^{k=2}(47)$ from the $H1_2$ Test and evaluate them according to section 3.7. Determine the quantities $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ Test and evaluate them according to section 3.10. For heat pumps where the heating mode maximum compressor speed exceeds its cooling mode maximum compressor speed, conduct the $H1_N$ Test if the manufacturer requests it. If the $H1_N$ Test is done, operate the heat pump's compressor at the same speed as the speed used for the cooling mode A_2 Test. Refer to the last sentence of section 4.2 to see how the results of the $H1_N$ Test may be used in calculating the heating seasonal performance factor.

TABLE 12.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ Test (required, steady)	70	60(max)	62	56.5	Minimum	Heating Minimum. [1]
$H0C_1$ Test (optional, cyclic)	70	60(max)	62	56.5	Minimum	([2])
$H1_2$ Test (required, steady)	70	60(max)	47	43	Maximum	Heating Certified. [3]
$H1_1$ Test (required, steady)	70	60(max)	47	43	Minimum	Heating Minimum. [1]
$H1_N$ Test (optional, steady)	70	60(max)	47	43	Cooling Mode Maximum.	Heating Nominal. [4]
$H2_2$ Test (optional)	70	60(max)	35	33	Maximum	Heating Certified. [3]
$H2_V$ Test (required)	70	60(max)	35	33	Intermediate	Heating Intermediate. [5]
$H3_2$ Test (required, steady)	70	60(max)	17	15	Maximum	Heating Certified. [3]

[1] Defined in section 3.1.4.5.
[2] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the $H0_1$ Test.
[3] Defined in section 3.1.4.4.
[4] Defined in section 3.1.4.7.
[5] Defined in section 3.1.4.6.

3.6.5 Additional test for a heat pump having a heat comfort controller. Test any heat pump that has a heat comfort controller (see Definition 1.28) according to section 3.6.1, 3.6.2, or 3.6.3, whichever applies, with the heat comfort controller disabled. Additionally, conduct the abbreviated test described in section 3.1.9 with the heat comfort controller active to determine the system's maximum supply air temperature. (Note: heat pumps having a variable speed compressor and a heat comfort controller are not covered in the test procedure at this time.)

3.7 Test procedures for steady-state Maximum Temperature and High Temperature heating mode tests (the $H0_1$, H1, $H1_2$, $H1_1$, and $H1_N$ Tests). a. For the pretest interval, operate the test room reconditioning apparatus and the heat pump until equilibrium conditions are maintained for at least 30 minutes at the specified section 3.6 test conditions. Use the exhaust fan of the airflow measuring apparatus and, if installed, the indoor fan of the heat pump to obtain and then maintain the indoor air volume rate and/or the external static pressure specified for the particular test. Continuously record the dry-bulb temperature of the air entering the indoor coil, and the dry-bulb temperature and water vapor content of the air entering the outdoor coil. Refer to section 3.11 for additional requirements that depend on the selected secondary test method. After satisfying the pretest equilibrium requirements, make the measurements specified in Table 5 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) for the Indoor Air Enthalpy method and the user-selected secondary method. Except for external static pressure, make the Table 5 measurements at equal intervals that span 10 minutes or less. Measure external static pressure every 5 minutes or less. Continue data sampling until a 30-minute period (*e.g.*, four consecutive 10-minute samples) is reached where the test tolerances specified in Table 13 are satisfied. For those continuously recorded parameters, use the entire data set for the 30-minute interval when evaluating Table 13 compliance. Determine the average electrical power consumption of the heat pump over the same 30-minute interval.

TABLE 13.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.7 AND SECTION 3.10 STEADY-STATE HEATING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [2]
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F:		
Entering temperature	1.0	
Leaving temperature	1.0	
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	[2] 2.0	
Outdoor wet-bulb, °F:		
Entering temperature	1.0	0.3
Leaving temperature	[3] 1.0	
External resistance to airflow, inches of water	0.05	[4] 0.02
Electrical voltage, % of rdg	2.0	1.5
Nozzle pressure drop, % of rdg	2.0	

[1] See Definition 1.41.
[2] See Definition 1.40.
[3] Only applies when the Outdoor Air Enthalpy Method is used.
[4] Only applies when testing non-ducted units.

b. Calculate indoor-side total heating capacity as specified in section 7.3.4.1 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). Do not adjust the parameters used in calculating capacity for the permitted variations in test conditions. Assign the average space heating capacity and electrical power over the 30-minute data collection interval to the variables $\dot{Q}_h^k$ and $\dot{E}_h^k(T)$ respectively. The "T" and superscripted "k" are the same as described in section 3.3. Additionally, for the heating mode, use the superscript to denote results from the optional $H1_N$ Test, if conducted.

c. For heat pumps tested without an indoor fan installed, increase $\dot{Q}_h^k(T)$ by

$$\frac{1250\ \text{Btu/h}}{1000\ \text{scfm}} \cdot \overline{\dot{V}}_s,$$

and increase $\dot{E}_h^k(T)$ by,

$$\frac{365\ \text{W}}{1000\ \text{scfm}} \cdot \overline{\dot{V}}_s,$$

where $\overline{\dot{V}}_s$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm). During the 30-minute data collection interval of a High Temperature Test, pay attention to preventing a defrost cycle. Prior to this time, allow the heat pump to perform a defrost cycle if automatically initiated by its own controls. As in all cases, wait for the heat pump's defrost controls to automatically terminate the defrost cycle. Heat pumps that undergo a defrost should operate in the heating mode for at least 10 minutes after defrost termination prior to beginning the 30-minute data collection interval. For some heat pumps, frost may accumulate on the outdoor coil during a High Temperature test. If the indoor coil leaving air temperature or the difference between the leaving and entering air temperatures decreases by more than 1.5 °F over the 30-minute data collection interval, then do not use the collected data to determine capacity. Instead, initiate a defrost cycle. Begin collecting data no sooner than 10 minutes after defrost termination. Collect 30 minutes of new data during which the Table 13 test tolerances are satisfied. In this case, use only the results from the second 30-minute data collection interval to evaluate $\dot{Q}_h^k(47)$ and $\dot{E}_h^k(47)$.

d. If conducting the optional cyclic heating mode test, which is described in section 3.8, record the average indoor-side air volume rate, $\overline{V}$, specific heat of the air, $C_{p,a}$ (expressed on dry air basis), specific volume of the air at the nozzles, v_n' (or v_n), humidity ratio at the nozzles, W_n, and either pressure difference or velocity pressure for the flow nozzles. If either or both of the below criteria apply, determine the average, steady-state, electrical power consumption of the indoor fan motor ($\dot{E}_{fan,1}$):

1. The section 3.8 cyclic test will be conducted and the heat pump has a variable-speed indoor fan that is expected to be disabled during the cyclic test; or

2. The heat pump has a (variable-speed) constant-air volume-rate indoor fan and during the steady-state test the average external static pressure (ΔP_1) exceeds the applicable section 3.1.4.4 minimum (or targeted) external static pressure (ΔP_{min}) by 0.03 inches of water or more.

Determine $\dot{E}_{fan,1}$ by making measurements during the 30-minute data collection interval, or immediately following the test and prior to changing the test conditions. When the above "2" criteria applies, conduct the

following four steps after determining $\dot{E}_{fan,1}$ (which corresponds to ΔP_1):

i. While maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

ii. After re-establishing steady readings for fan motor power and external static pressure, determine average values for the indoor fan power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

iii. Approximate the average power consumption of the indoor fan motor if the 30-minute test had been conducted at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}\left(\Delta P_{min} - \Delta P_1\right) + \dot{E}_{fan,1}.$$

iv. Decrease the total space heating capacity, $\dot{Q}_h^k(T)$, by the quantity ($\dot{E}_{fan,1} - \dot{E}_{fan,min}$), when expressed on a Btu/h basis. Decrease the total electrical power, $\dot{E}_h^k(T)$ by the same fan power difference, now expressed in watts.

3.8 Test procedures for the optional cyclic heating mode tests (the H0C$_1$, H1C, and H1C$_1$ Tests). a. Except as noted below, conduct the cyclic heating mode test as specified in section 3.5. As adapted to the heating mode, replace section 3.5 references to "the steady-state dry coil test" with "the heating mode steady-state test conducted at the same test conditions as the cyclic heating mode test." Use the test tolerances in Table 14 rather than Table 8. Record the outdoor coil entering wet-bulb temperature according to the requirements given in section 3.5 for the outdoor coil entering dry-bulb temperature. Drop the subscript "dry" used in variables cited in section 3.5 when referring to quantities from the cyclic heating mode test. Determine the total space heating delivered during the cyclic heating test, q_{cyc}, as specified in section 3.5 except for making the following changes:

(1) When evaluating Equation 3.5–1, use the values of $\bar{V}$, $C_{p,a}$,v_n', (or v_n), and W_n that were recorded during the section 3.7 steady-state test conducted at the same test conditions.

(2) Calculate Γ using,

$$\Gamma = \int_{\tau_1}^{\tau_2}\left[T_{a2}(\tau) - T_{a1}(\tau)\right]\delta\tau, \text{ hr} \cdot {}^\circ\text{F}.$$

b. For ducted heat pumps tested without an indoor fan installed (excluding the special case where a variable-speed fan is temporarily removed), increase q_{cyc} by the amount calculated using Equation 3.5–3. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–2. In making these calculations, use the average indoor air volume rate ($\bar{V}_s$) determined from the section 3.7 steady-state heating mode test conducted at the same test conditions.

c. For non-ducted heat pumps, subtract the electrical energy used by the indoor fan during the 3 minutes after compressor cutoff from the non-ducted heat pump's integrated heating capacity, q_{cyc}.

d. If a heat pump defrost cycle is manually or automatically initiated immediately prior to or during the OFF/ON cycling, operate the heat pump continuously until 10 minutes after defrost termination. After that, begin cycling the heat pump immediately or delay until the specified test conditions have been re-established. Pay attention to preventing defrosts after beginning the cycling process. For heat pumps that cycle off the indoor fan during a defrost cycle, make no effort here to restrict the air movement through the indoor coil while the fan is off. Resume the OFF/ON cycling while conducting a minimum of two complete compressor OFF/ON cycles before determining q_{cyc} and e_{cyc}.

3.8.1 Heating mode cyclic degradation coefficient calculation. Use the results from the optional cyclic test and the required steady-state test that were conducted at the same test conditions to determine the heating mode cyclic degradation coefficient, C_D^h. If the optional test is not conducted, assign C_D^h the default value of 0.25.

$$C_D^h = \frac{1 - \dfrac{COP_{cyc}}{COP_{ss}\left(T_{cyc}\right)}}{1 - HLF}$$

where,

$$COP_{cyc} = \frac{q_{cyc}}{3.413\dfrac{\text{Btu/h}}{\text{W}} \cdot e_{cyc}},$$

the average coefficient of performance during the cyclic heating mode test, dimensionless.

$$COP_{ss}\left(T_{cyc}\right) = \frac{\dot{Q}_h^k\left(T_{cyc}\right)}{3.413\dfrac{\text{Btu/h}}{\text{W}} \cdot \dot{E}_h^k\left(T_{cyc}\right)},$$

the average coefficient of performance during the steady-state heating mode test conducted at the same test conditions—*i.e.*, same outdoor dry bulb temperature, T_{cyc}, and speed/capacity, k, if applicable—as specified for the cyclic heating mode test, dimensionless.

$$HLF = \frac{q_{cyc}}{\dot{Q}_h^k\left(T_{cyc}\right) \cdot \Delta\tau_{cyc}},$$

the heating load factor, dimensionless.

T_{cyc} = the nominal outdoor temperature at which the cyclic heating mode test is conducted, 62 or 47 °F.

$\Delta\tau_{cyc}$ = the duration of the OFF/ON intervals; 0.5 hours when testing a heat pump having a single-speed or two-capacity compressor and 1.0 hour when testing a heat pump having a variable-speed compressor.

Round the calculated value for C_D^h to the nearest 0.01. If C_D^h is negative, then set it equal to zero.

TABLE 14.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR CYCLIC HEATING MODE TESTS.

	Test operating tolerance [1]	Test condition tolerance [2]
Indoor entering dry-bulb temperature,[3] °F	2.0	0.5
Indoor entering wet-bulb temperature,[3] °F	1.0	
Outdoor entering dry-bulb temperature,[3] °F	2.0	0.5
Outdoor entering wet-bulb temperature,[3] °F	2.0	1.0
External resistance to air-flow,[3] inches of water	0.05	
Airflow nozzle pressure difference or velocity pressure,[3] % of reading	2.0	[4] 2.0
Electrical voltage,[5] % of rdg	2.0	1.5

[1] See Definition 1.41.

[2] See Definition 1.40.

[3] Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor fan that ramps, the tolerances listed for the external resistance to airflow shall apply from 30 seconds after achieving full speed until ramp down begins.

[4] The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state test conducted at the same test conditions.

[5] Applies during the interval that at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor fan—are operating, except for the first 30 seconds after compressor start-up.

3.9 Test procedures for Frost Accumulation heating mode tests (the H2, H2$_2$, H2$_V$, and H2$_1$ Tests). a. Confirm that the defrost controls of the heat pump are set as specified in section 2.2.1. Operate the test room reconditioning apparatus and the heat pump for at least 30 minutes at the specified section 3.6 test conditions before starting the "preliminary" test period. The preliminary test period must immediately precede the "official" test period, which is the heating and defrost interval over which data are collected for evaluating average space heating capacity and average electrical power consumption.

b. For heat pumps containing defrost controls which are likely to cause defrosts at intervals less than one hour, the preliminary test period starts at the termination of an automatic defrost cycle and ends at the termination of the next occurring automatic defrost cycle. For heat pumps containing defrost controls which are likely to cause defrosts at intervals exceeding one hour, the preliminary test period must consist of a heating interval lasting at least one hour followed by a defrost cycle that is either manually or automatically initiated. In all

cases, the heat pump's own controls must govern when a defrost cycle terminates.

c. The official test period begins when the preliminary test period ends, at defrost termination. The official test period ends at the termination of the next occurring automatic defrost cycle. When testing a heat pump that uses a time-adaptive defrost control system (see Definition 1.42), however, manually initiate the defrost cycle that ends the official test period at the instant indicated by instructions provided by the manufacturer. If the heat pump has not undergone a defrost after 12 hours, immediately conclude the test and use the results from the full 12-hour period to calculate the average space heating capacity and average electrical power consumption. For heat pumps that turn the indoor fan off during the defrost cycle, take steps to cease forced airflow through the indoor coil and block the outlet duct whenever the heat pump's controls cycle off the indoor fan. If it is installed, use the outlet damper box described in section 2.5.4.1 to affect the blocked outlet duct.

d. Defrost termination occurs when the controls of the heat pump actuate the first change in converting from defrost operation to normal heating operation. Defrost initiation occurs when the controls of the heat pump first alter its normal heating operation in order to eliminate possible accumulations of frost on the outdoor coil.

e. To constitute a valid Frost Accumulation test, satisfy the test tolerances specified in Table 15 during both the preliminary and official test periods. As noted in Table 15, test operating tolerances are specified for two sub-intervals: (1) When heating, except for the first 10 minutes after the termination of a defrost cycle (Sub-interval H, as described in Table 15) and (2) when defrosting, plus these same first 10 minutes after defrost termination (Sub-interval D, as described in Table 15). Evaluate compliance with Table 15 test condition tolerances and the majority of the test operating tolerances using the averages from measurements recorded only during Sub-interval H. Continuously record the dry bulb temperature of the air entering the indoor coil, and the dry bulb temperature and water vapor content of the air entering the outdoor coil. Sample the remaining parameters listed in Table 15 at equal intervals that span 10 minutes or less.

f. For the official test period, collect and use the following data to calculate average space heating capacity and electrical power. During heating and defrosting intervals when the controls of the heat pump have the indoor fan on, continuously record the dry-bulb temperature of the air entering (as noted above) and leaving the indoor coil. If using a thermopile, continuously record the difference between the leaving and entering dry-bulb temperatures during the interval(s) that air flows through the indoor coil. For heat pumps tested without an indoor fan installed, determine the corresponding cumulative time (in hours) of indoor coil airflow, $\Delta\tau_a$. Sample measurements used in calculating the air volume rate (refer to sections 7.8.3.1 and 7.8.3.2 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22)) at equal intervals that span 10 minutes or less. Record the electrical energy consumed, expressed in watt-hours, from defrost termination to defrost termination, $e_{DEF}{}^{k}(35)$, as well as the corresponding elapsed time in hours, $\Delta\tau_{FR}$.

TABLE 15.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR FROST ACCUMULATION HEATING MODE TESTS.

	Test operating tolerance [1]		Test condition tolerance [2]
	Sub-interval H [3]	Sub-interval D [4]	Sub-interval H [3]
Indoor entering dry-bulb temperature, °F	2.0	[5] 4.0	0.5
Indoor entering wet-bulb temperature, °F	1.0	.....	.....
Outdoor entering dry-bulb temperature, °F	2.0	10.0	1.0
Outdoor entering wet-bulb temperature, °F	1.5	.....	0.5
External resistance to airflow, inches of water	0.05	.....	0.02 [6]
Electrical voltage, % of rdg	2.0	.....	1.5

[1] See Definition 1.41.
[2] See Definition 1.40.
[3] Applies when the heat pump is in the heating mode, except for the first 10 minutes after termination of a defrost cycle.
[4] Applies during a defrost cycle and during the first 10 minutes after the termination of a defrost cycle when the heat pump is operating in the heating mode.
[5] For heat pumps that turn off the indoor fan during the defrost cycle, the noted tolerance only applies during the 10 minute interval that follows defrost termination.
[6] Only applies when testing non-ducted heat pumps.

3.9.1 Average space heating capacity and electrical power calculations. a. Evaluate average space heating capacity, $\dot{Q}_h{}^{k}(35)$, when expressed in units of Btu per hour, using:

$$\dot{Q}_h^k(35) = \frac{60 \cdot \overline{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{\Delta\tau_{FR}\left[v_n' \cdot (1 + W_n)\right]} = \frac{60 \cdot \overline{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{\Delta\tau_{FR} \cdot v_n}$$

where,

$\overline{\dot{V}}$ = the average indoor air volume rate measured during Sub-interval H, cfm.

$C_{p,a} = 0.24 + 0.444 \cdot W_n$, the constant pressure specific heat of the air-water vapor mixture that flows through the indoor coil and is expressed on a dry air basis, Btu / $lbm_{da} \cdot °F$.

v_n' = specific volume of the air-water vapor mixture at the nozzle, ft^3 / lbm_{mx}.

W_n = humidity ratio of the air-water vapor mixture at the nozzle, lbm of water vapor per lbm of dry air.

$\Delta\tau_{FR} = \tau_2 - \tau_1$, the elapsed time from defrost termination to defrost termination, hr.

$$\Gamma = \int_{\tau_1}^{\tau_2} \left[T_{a2}(\tau) - T_{a1}(\tau)\right] d\tau, \ hr \cdot °F.$$

$T_{a1}(\tau)$ = dry bulb temperature of the air entering the indoor coil at elapsed time τ, °F; only recorded when indoor coil airflow occurs; assigned the value of zero during periods (if any) where the indoor fan cycles off.

$T_{a2}(\tau)$ = dry bulb temperature of the air leaving the indoor coil at elapsed time τ, °F; only recorded when indoor coil airflow occurs; assigned the value of zero during periods (if any) where the indoor fan cycles off.

τ_1 = the elapsed time when the defrost termination occurs that begins the official test period, hr.

τ_2 = the elapsed time when the next automatically occurring defrost termination occurs, thus ending the official test period, hr.

v_n = specific volume of the dry air portion of the mixture evaluated at the dry-bulb temperature, vapor content, and barometric pressure existing at the nozzle, ft^3 per lbm of dry air.

b. Evaluate average electrical power, $\dot{E}_h^k(35)$, when expressed in units of watts, using:

$$\dot{E}_h^k(35) = \frac{e_{def}(35)}{\Delta\tau_{FR}}.$$

For heat pumps tested without an indoor fan installed, increase $\dot{Q}_h^k(35)$ by,

$$\frac{1250\ \text{Btu/h}}{1000\ \text{scfm}} \cdot \overline{\dot{V}}_s \cdot \frac{\Delta\tau_a}{\Delta\tau_{FR}},$$

and increase $\dot{E}_h^k(35)$ by,

$$\frac{365\ \text{W}}{1000\ \text{scfm}} \cdot \overline{\dot{V}}_s \cdot \frac{\Delta\tau_a}{\Delta\tau_{FR}},$$

where $\overline{\dot{V}}_s$ is the average indoor air volume rate measured during the Frost Accumulation heating mode test and is expressed in units of cubic feet per minute of standard air (scfm).

c. For heat pumps having a constant-air-volume-rate indoor fan, the five additional steps listed below are required if the average of the external static pressures measured during sub-Interval H exceeds the applicable section 3.1.4.4, 3.1.4.5, or 3.1.4.6 minimum (or targeted) external static pressure (ΔP_{min}) by 0.03 inches of water or more:

1. Measure the average power consumption of the indoor fan motor ($\dot{E}_{fan,1}$) and record the corresponding external static pressure (ΔP_1) during or immediately following the Frost Accumulation heating mode test. Make the measurement at a time when the heat pump is heating, except for the first 10 minutes after the termination of a defrost cycle.

2. After the Frost Accumulation heating mode test is completed and while maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

3. After re-establishing steady readings for the fan motor power and external static pressure, determine average values for the indoor fan power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

4. Approximate the average power consumption of the indoor fan motor had the Frost Accumulation heating mode test been conducted at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}\left(\Delta P_{min} - \Delta P_1\right) + \dot{E}_{fan,1}.$$

5. Decrease the total heating capacity, $\dot{Q}_h^k(35)$, by the quantity $[(\dot{E}_{fan,1} - \dot{E}_{fan,min}) \cdot (\Delta\tau_a/\Delta\tau_{FR}]$, when expressed on a Btu/h basis. Decrease the total electrical power, $E_h^k(35)$, by the same quantity, now expressed in watts.

3.9.2 Demand defrost credit. a. Assign the demand defrost credit, F_{def}, that is used in section 4.2 to the value of 1 in all cases except for heat pumps having a demand-defrost control system (Definition 1.21). For such qualifying heat pumps, evaluate F_{def} using,

$$F_{def} = 1 + 0.03 \cdot \left[1 - \frac{\Delta\tau_{def} - 1.5}{\Delta\tau_{max} - 1.5}\right],$$

where,

$\Delta\tau_{def}$ = the time between defrost terminations (in hours) or 1.5, whichever is greater.

$\Delta\tau_{max}$ = maximum time between defrosts as allowed by the controls (in hours) or 12, whichever is less.

b. For two-capacity heat pumps and for section 3.6.2 units, evaluate the above equation using the $\Delta\tau_{def}$ that applies based on the Frost Accumulation Test conducted at high capacity and/or at the Heating Certified Air Volume Rate. For variable-speed heat pumps, evaluate $\Delta\tau_{def}$ based on the required Frost Accumulation Test conducted at the intermediate compressor speed.

3.10 Test procedures for steady-state Low Temperature heating mode tests (the H3, $H3_2$, and $H3_1$ Tests). Except for the modifications noted in this section, conduct the Low Temperature heating mode test using the same approach as specified in section 3.7 for the Maximum and High Temperature tests. After satisfying the section 3.7 requirements for the pretest interval but before beginning to collect data to determine $\dot{Q}_h^k(17)$ and $\dot{E}_h^k(17)$, conduct a defrost cycle. This defrost cycle may be manually or automatically initiated. The defrost sequence must be terminated by the action of the heat pump's defrost controls. Begin the 30-minute data collection interval described in section 3.7, from which $\dot{Q}_h^k(17)$ and $\dot{E}_h^k(17)$ are determined, no sooner than 10 minutes after defrost termination. Defrosts should be prevented over the 30-minute data collection interval.

3.11 Additional requirements for the secondary test methods. Prior to evaluating if the energy balance specified in section 3.1.1 is obtained, make an adjustment to account for the energy loss within the air duct that connects the indoor coil and the location where the outlet dry-bulb temperature is measured. If using the Outdoor Air Enthalpy Method, make an adjustment to account for the energy loss within the air duct that connects the outdoor coil and the location where the outlet temperature is measured. In all cases, apply the correction to the indoor space conditioning capacity that is determined using the secondary test method.

3.11.1 If using the Outdoor Air Enthalpy Method as the secondary test method. During the "official" test, the outdoor air-side test apparatus described in section 2.10.1 is connected to the outdoor unit. To help compensate for any effect that the addition of this test apparatus may have on the unit's performance, conduct a "preliminary" test where the outdoor air-side test apparatus is disconnected. Conduct a preliminary test prior to the first section 3.2 steady-state cooling mode test and prior to the first section 3.6 steady-state heating mode test. No other preliminary tests are required so long as the unit operates the outdoor fan during all cooling mode steady-state tests at the same speed and all heating mode steady-state tests at the same speed. If using more than one outdoor fan speed for the cooling mode steady-state tests, however, conduct a preliminary test prior to each cooling mode test where a different fan speed is first used. This same requirement applies for the heating mode tests.

3.11.1.1 If a preliminary test precedes the official test. a. The test conditions for the preliminary test are the same as specified for the official test. Connect the indoor air-side test apparatus to the indoor coil; disconnect the outdoor air-side test apparatus. Allow the test room reconditioning apparatus and the unit being tested to operate for at least one hour. After attaining equilibrium conditions, measure the following quantities at equal intervals that span 10 minutes or less:

1. The section 2.10.1 evaporator and condenser temperatures or pressures;

2. Parameters required according to the Indoor Air Enthalpy Method.

Continue these measurements until a 30-minute period (*e.g.*, four consecutive 10-minute samples) is obtained where the Table 7 or Table 13, whichever applies, test tolerances are satisfied.

b. After collecting 30 minutes of steady-state data, reconnect the outdoor air-side test apparatus to the unit. Adjust the exhaust fan of the outdoor airflow measuring apparatus until averages for the evaporator and condenser temperatures, or the saturated temperatures corresponding to the measured pressures, agree within ±0.5 °F of the averages achieved when the outdoor air-side test apparatus was disconnected. Calculate the averages for the reconnected case using five or more consecutive readings taken at one minute intervals. Make these consecutive readings after re-establishing equilibrium conditions and before initiating the official test.

3.11.1.2 If a preliminary test does not precede the official test. Connect the outdoor-side test apparatus to the unit. Adjust the exhaust fan of the outdoor airflow measuring apparatus to achieve the same external static pressure as measured during the prior preliminary test conducted with the unit operating in the same cooling or heating mode at the same outdoor fan speed.

3.11.1.3 Official test. a. Continue (preliminary test was conducted) or begin (no preliminary test) the official test by making measurements for both the Indoor and Outdoor Air Enthalpy Methods at equal intervals that span 10 minutes or less.

Discontinue these measurement only after obtaining a 30-minute period where the specified test condition and test operating tolerances are satisfied. To constitute a valid official test:

(1) Achieve the energy balance specified in section 3.1.1; and,

(2) For cases where a preliminary test is conducted, the capacities determined using the Indoor Air Enthalpy Method from the official and preliminary test periods must agree within 2.0 percent.

b. For space cooling tests, calculate capacity from the outdoor air enthalpy measurements as specified in section 7.3.3.2 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). Calculate heating capacity based on outdoor air enthalpy measurements as specified in section 7.3.4.2 of the same ASHRAE Standard. Adjust outdoor side capacities according to section 7.3.3.3 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22) to account for line losses when testing split systems. Do not correct the average electrical power measurement as described in section 8.5.3 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22).

3.11.2 If using the Compressor Calibration Method as the secondary test method.

a. Conduct separate calibration tests using a calorimeter to determine the refrigerant flow rate. Or for cases where the superheat of the refrigerant leaving the evaporator is less than 5 °F, use the calorimeter to measure total capacity rather than refrigerant flow rate. Conduct these calibration tests at the same test conditions as specified for the tests in this Appendix. Operate the unit for at least one hour or until obtaining equilibrium conditions before collecting data that will be used in determining the average refrigerant flow rate or total capacity. Sample the data at equal intervals that span 10 minutes or less. Determine average flow rate or average capacity from data sampled over a 30-minute period where the Table 7 (cooling) or the Table 13 (heating) tolerances are satisfied. Otherwise, conduct the calibration tests according to ASHRAE Standard 23–93 (incorporated by reference, see § 430.22), ASHRAE Standard 41.9–00 (incorporated by reference, see § 430.22), and section 7.5 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22).

b. Calculate space cooling and space heating capacities using the compressor calibration method measurements as specified in sections 7.5.7 and 7.5.8, respectively, of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22).

3.11.3 If using the Refrigerant Enthalpy Method as the secondary test method. Conduct this secondary method according to section 7.6 of ASHRAE Standard 37–88 (incorporated by reference, see § 430.22). Calculate space cooling and space heating capacities using the refrigerant enthalpy method measurements as specified in sections 7.6.4 and 7.6.5, respectively, of the same ASHRAE Standard.

3.12 Rounding of space conditioning capacities for reporting purposes.

a. When reporting rated capacities, round them off as follows:

1. For capacities less than 20,000 Btu/h, round to the nearest 100 Btu/h.

2. For capacities between 20,000 and 37,999 Btu/h, round to the nearest 200 Btu/h.

3. For capacities between 38,000 and 64,999 Btu/h, round to the nearest 500 Btu/h.

b. For the capacities used to perform the section 4 calculations, however, round only to the nearest integer.

4. CALCULATIONS OF SEASONAL PERFORMANCE DESCRIPTORS

4.1 Seasonal Energy Efficiency Ratio (SEER) Calculations. SEER must be calculated as follows: For equipment covered under sections 4.1.2, 4.1.3, and 4.1.4, evaluate the seasonal energy efficiency ratio,

$$SEER = \frac{\sum_{j=1}^{8} q_c(T_j)}{\sum_{j=1}^{8} e_c(T_j)} = \frac{\sum_{j=1}^{8} \frac{q_c(T_j)}{N}}{\sum_{j=1}^{8} \frac{e_c(T_j)}{N}} \qquad (4.1\text{-}1)$$

where,

$$\frac{q_c(T_j)}{N} =$$

the ratio of the total space cooling provided during periods of the space cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season (N), Btu/h.

$$\frac{e_c(T_j)}{N} =$$

the electrical energy consumed by the test unit during periods of the space cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season (N), W.

T_j = the outdoor bin temperature, °F. Outdoor temperatures are grouped or "binned." Use bins of 5 °F with the 8 cooling season bin temperatures being 67, 72, 77, 82, 87, 92, 97, and 102 °F.

j = the bin number. For cooling season calculations, j ranges from 1 to 8.

Additionally, for sections 4.1.2, 4.1.3, and 4.1.4, use a building cooling load, $BL(T_j)$. When referenced, evaluate $BL(T_j)$ for cooling using,

$$BL(T_j) = \frac{(T_j - 65)}{95 - 65} \cdot \frac{\dot{Q}_c^{k=2}(95)}{1.1} \qquad (4.1\text{-}2)$$

where,

$\dot{Q}_c^{k=2}(95)$ = the space cooling capacity determined from the A_2 Test and calculated as specified in section 3.3, Btu/h.

1.1 = sizing factor, dimensionless.

The temperatures 95 °F and 65 °F in the building load equation represent the selected outdoor design temperature and the zero-load base temperature, respectively.

4.1.1 SEER calculations for an air conditioner or heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed. a. Evaluate the seasonal energy efficiency ratio, expressed in units of Btu/watt-hour, using:

$SEER = PLF(0.5) \cdot EER_B$

where,

$$EER_B = \frac{\dot{Q}_c(82)}{\dot{E}_c(82)},$$

the energy efficiency ratio determined from the B Test described in sections 3.2.1, 3.1.4.1, and 3.3, Btu/h per watt.

$PLF(0.5) = 1 - 0.5 \cdot C_D^c$, the part-load performance factor evaluated at a cooling load factor of 0.5, dimensionless.

b. Refer to section 3.3 regarding the definition and calculation of $\dot{Q}_c(82)$ and $\dot{E}_c(82)$. If the optional tests described in section 3.2.1 are not conducted, set the cooling mode cyclic degradation coefficient, C_D^c, to the default value specified in section

3.5.3. If these optional tests are conducted, set C_D^c to the lower of:

1. The value calculated as per section 3.5.3; or

2. The section 3.5.3 default value of 0.25.

4.1.2 SEER calculations for an air conditioner or heat pump having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan.

4.1.2.1 Units covered by section 3.2.2.1 where indoor fan capacity modulation correlates with the outdoor dry bulb temperature. The manufacturer must provide information on how the indoor air volume rate or the indoor fan speed varies over the outdoor temperature range of 67 °F to 102 °F. Calculate SEER using Equation 4.1–1. Evaluate the quantity $q_c(T_j)/N$ in Equation 4.1–1 using,

$$\frac{q_c(T_j)}{N} = X(T_j) \cdot \dot{Q}_c(T_j) \cdot \frac{n_j}{N} \qquad (4.1.2\text{-}1)$$

where,

$$X(T_j) = \left\{ \begin{array}{c} BL(T_j)/\dot{Q}_c(T_j) \\ \text{or} \\ 1 \end{array} \right\};$$

whichever is less; the cooling mode load factor for temperature bin j, dimensionless.

$\dot{Q}_c(T_j)$ = the space cooling capacity of the test unit when operating at outdoor temperature, T_j, Btu/h.

n_j/N = fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

a. For the space cooling season, assign n_j/N as specified in Table 16. Use Equation 4.1–2 to calculate the building load, $BL(T_j)$. Evaluate $\dot{Q}_c(T_j)$ using,

$$\dot{Q}_c(T_j) = \dot{Q}_c^{k=1}(T_j) + \frac{\dot{Q}_c^{k=2}(T_j) - \dot{Q}_c^{k=1}(T_j)}{FP_c^{k=2} - FP_c^{k=1}} \cdot \left[FP_c(T_j) - FP_c^{k=1} \right] \qquad (4.1.2\text{-}2)$$

where,

$$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(82) + \frac{\dot{Q}_c^{k=1}(95) - \dot{Q}_c^{k=1}(82)}{95 - 82} \cdot (T_j - 82),$$

the space cooling capacity of the test unit at outdoor temperature T_j if operated at the Cooling Minimum Air Volume Rate, Btu/h.

$$\dot{Q}_c^{k=2}(T_j) = \dot{Q}_c^{k=2}(82) + \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95 - 82} \cdot (T_j - 82),$$

the space cooling capacity of the test unit at outdoor temperature T_j if operated at the Cooling Certified Air Volume Rate, Btu/h.

b. For units where indoor fan speed is the primary control variable, $FP_c^{k=1}$ denotes the fan speed used during the required A_1 and B_1 Tests (see section 3.2.2.1), $FP_c^{k=2}$ denotes the fan speed used during the required A_2 and B_2 Tests, and $FP_c(T_j)$ denotes the fan speed used by the unit when the outdoor temperature equals T_j. For units where indoor air volume rate is the primary control variable, the three FP_c's are similarly defined only now being expressed in terms of air volume rates rather than fan speeds. Refer to sections 3.2.2.1, 3.1.4 to 3.1.4.2, and 3.3 regarding the definitions and calculations of $\dot{Q}_c^{k=1}(82)$, $\dot{Q}_c^{k=1}(95)$, $\dot{Q}_c^{k=2}(82)$, and $\dot{Q}_c^{k=2}(95)$. Calculate $e_c(T_j)/N$ in Equation 4.1–1 using,

$$\frac{e_c(T_j)}{N} = \frac{X(T_j) \cdot \dot{E}_c(T_j)}{PLF_j} \cdot \frac{n_j}{N} \qquad (4.1.2\text{-}3)$$

where,

$PLF_j = 1 - C_D^c \cdot [1 - X(T_j)]$, the part load factor, dimensionless.

$\dot{E}_c(T_j)$ = the electrical power consumption of the test unit when operating at outdoor temperature T_j, W.

c. The quantities $X(T_j)$ and n_j/N are the same quantities as used in Equation 4.1.2–1. If the optional tests described in section 3.2.2.1 and Table 4 are not conducted, set the cooling mode cyclic degradation coefficient, C_D^c, to the default value specified in section 3.5.3. If these optional tests are conducted, set C_D^c to the lower of:

1. The value calculated as per section 3.5.3; or

2.The section 3.5.3 default value of 0.25.

d. Evaluate $\dot{E}_c(T_j)$ using,

$$\dot{E}_c(T_j) = \dot{E}_c^{k=1}(T_j) + \frac{\dot{E}_c^{k=2}(T_j) - \dot{E}_c^{k=1}(T_j)}{FP_c^{k=2} - FP_c^{k=1}} \cdot \left[FP_c(T_j) - FP_c^{k=1} \right] \qquad (4.1.2\text{-}4)$$

where

$$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(82) + \frac{\dot{E}_c^{k=1}(95) - \dot{E}_c^{k=1}(82)}{95 - 82} \cdot (T_j - 82),$$

the electrical power consumption of the test unit at outdoor temperature T_j if operated at the Cooling Minimum Air Volume Rate, W.

$$\dot{E}_c^{k=2}(T_j) = \dot{E}_c^{k=2}(82) + \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95 - 82} \cdot (T_j - 82),$$

the electrical power consumption of the test unit at outdoor temperature T_j if operated at the Cooling Certified Air Volume Rate, W.

e. The parameters $FP_c^{k=1}$, and $FP_c^{k=2}$, and $FP_c(T_j)$ are the same quantities that are used when evaluating Equation 4.1.2–2. Refer to sections 3.2.2.1, 3.1.4 to 3.1.4.2, and 3.3 regarding the definitions and calculations of $\dot{E}_c^{k=1}(82)$, $\dot{E}_c^{k=1}(95)$, $\dot{E}_c^{k=2}(82)$, and $\dot{E}_c^{k=2}(95)$.

4.1.2.2 Units covered by section 3.2.2.2 where indoor fan capacity modulation is used to adjust the sensible to total cooling capacity ratio. Calculate SEER as specified in section 4.1.1.

4.1.3 SEER calculations for an air conditioner or heat pump having a two-capacity compressor. Calculate SEER using Equation 4.1–1. Evaluate the space cooling capacity, $\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at low compressor capacity and outdoor temperature T_j using,

$$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(82) + \frac{\dot{Q}_c^{k=1}(95) - \dot{Q}_c^{k=1}(82)}{95 - 82} \cdot (T_j - 82) \qquad (4.1.3\text{-}1)$$

$$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(82) + \frac{\dot{E}_c^{k=1}(95) - \dot{E}_c^{k=1}(82)}{95 - 82} \cdot (T_j - 82) \qquad (4.1.3\text{-}2)$$

where $\dot{Q}_c^{k=1}(95)$ and $\dot{E}_c^{k=1}(95)$ are determined from the A_1 Test, $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 Test, and all are calculated as specified in section 3.3. For two-capacity units that lock out low capacity operation at outdoor temperatures less than 95 °F (but greater than 82 °F), use Equations 4.1.4–1 and 4.1.4–2 rather than Equations 4.1.3–1 and 4.1.3–2 for estimating performance at low compressor capacity.

Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at high compressor capacity and outdoor temperature T_j using,

$$\dot{Q}_c^{k=2}(T_j) = \dot{Q}_c^{k=2}(82) + \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95 - 82} \cdot (T_j - 82) \qquad (4.1.3\text{-}3)$$

$$\dot{E}_c^{k=2}(T_j) = \dot{E}_c^{k=2}(82) + \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95 - 82} \cdot (T_j - 82) \qquad (4.1.3\text{-}4)$$

where $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 Test, $\dot{Q}_c^{k=2}(82)$, and $\dot{E}_c^{k=2}(82)$, are determined from the B_2 Test, and all are calculated as specified in section 3.3.

The calculation of Equation 4.1–1 quantities $q_c(T_j)/N$ and $e_c(T_j)/N$ differs depending on whether the test unit would operate at low capacity (section 4.1.3.1), cycle between low and high capacity (section 4.1.3.2), or operate at high capacity (sections 4.1.3.3 and 4.1.3.4) in responding to the building load. For units that lock out low capacity operation at higher outdoor temperatures, the manufacturer must supply information regarding this temperature so that the appropriate equations are used. Use Equation 4.1–2 to calculate the building load, $BL(T_j)$, for each temperature bin.

4.1.3.1 Steady-state space cooling capacity at low compressor capacity is greater than or equal to the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) \geq BL(T_j)$.

$$\frac{q_c(T_j)}{N} = X^{k=1}(T_j) \cdot \dot{Q}_c^{k=1}(T_j) \cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \frac{X^{k=1}(T_j) \cdot \dot{E}_c^{k=1}(T_j)}{PLF_j} \cdot \frac{n_j}{N}$$

where,

$X^{k=1}(T_j) = BL(T_j)/\dot{Q}_c^{k=1}(T_j)$, the cooling mode low capacity load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D^c \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

$\frac{n_j}{N} =$ fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 16. Use Equations 4.1.3–1 and 4.1.3–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. If the optional tests described in section 3.2.3 and Table 5 are not conducted, set the cooling mode cyclic degradation coefficient, C_D^c, to the default value specified in section 3.5.3. If these optional tests are conducted, set C_D^c to the lower of:

a. The value calculated according to section 3.5.3; or

b. The section 3.5.3 default value of 0.25.

TABLE 16.—DISTRIBUTION OF FRACTIONAL HOURS WITHIN COOLING SEASON TEMPERATURE BINS

Bin number, j	Bin temperature range °F	Representative temperature for bin °F	Fraction of of total temperature bin hours, n_j/N
1	65–69	67	0.214
2	70–74	72	0.231
3	75–79	77	0.216
4	80–84	82	0.161
5	85–89	87	0.104
6	90–94	92	0.052
7	95–99	97	0.018
8	100–104	102	0.004

4.1.3.2 Unit alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \left[X^{k=1}(T_j)\cdot\dot{Q}_c^{k=1}(T_j) + X^{k=2}(T_j)\cdot\dot{Q}_c^{k=2}(T_j)\right]\cdot\frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \left[X^{k=1}(T_j)\cdot\dot{E}_c^{k=1}(T_j) + X^{k=2}(T_j)\cdot\dot{E}_c^{k=2}(T_j)\right]\cdot\frac{n_j}{N}$$

where,

$$X^{k=1}(T_j) = \frac{\dot{Q}_c^{k=2}(T_j) - BL(T_j)}{\dot{Q}_c^{k=2}(T_j) - \dot{Q}_c^{k=1}(T_j)},$$

the cooling mode, low capacity load factor for temperature bin j, dimensionless.

$X^{k=2}(T_j) = 1 - X^{k=1}(T_j)$, the cooling mode, high capacity load factor for temperature bin j, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 16. Use Equations 4.1.3–1 and 4.1.3–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$.

4.1.3.3 Unit only operates at high (k=2) compressor capacity at temperature T_j and its capacity is greater than the building cooling load, $BL(T_j) < \dot{Q}_c^{k=2}(T_j)$. This section applies to units that lock out low compressor capacity operation at higher outdoor temperatures.

$$\frac{q_c(T_j)}{N} = X^{k=2}(T_j)\cdot\dot{Q}_c^{k=2}(T_j)\cdot\frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \frac{X^{k=2}(T_j)\cdot\dot{E}_c^{k=2}(T_j)}{PLF_j}\cdot\frac{n_j}{N}$$

where,

$X^{k=2}(T_j) = BL(T_j)/\dot{Q}_c^{k=2}(T_j)$, the cooling mode high capacity load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D^c \cdot [1 - X^{k=2}(T_j)]$, the part load factor, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 16. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$. When evaluating the above equation for part load factor at high capacity, use the same value of C_D^c as used in the section 4.1.3.1 calculations.

4.1.3.4 Unit must operate continuously at high (k=2) compressor capacity at temperature T_j, $BL(T_j) \geq \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=2}(T_j)\cdot\frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_c^{k=2}(T_j)\cdot\frac{n_j}{N}.$$

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 16. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$.

4.1.4 SEER calculations for an air conditioner or heat pump having a variable-speed compressor. Calculate SEER using Equation 4.1–1. Evaluate the space cooling capacity, $\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at minimum compressor speed and outdoor temperature T_j. Use,

$$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(67) + \frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67}\cdot(T_j - 67) \qquad (4.1.4\text{-}1)$$

$$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(67) + \frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67}\cdot(T_j - 67) \qquad (4.1.4\text{-}2)$$

where $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 Test, $\dot{Q}_c^{k=1}(67)$ and $\dot{E}_c^{k=1}(67)$ are determined from the F1 Test, and all four quantities are calculated as specified in section 3.3. Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at maximum compressor speed and outdoor temperature T_j. Use Equations 4.1.3–3 and 4.1.3–4, respectively, where $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 Test, $\dot{Q}_c^{k=2}(82)$ and $\dot{E}_c^{k=2}(82)$ are determined from the B_2 Test, and all four quantities are calculated as specified in section 3.3.

Calculate the space cooling capacity, $\dot{Q}_c^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=v}(T_j)$, of the test unit when operating at outdoor temperature T_j and the intermediate compressor speed used during the section 3.2.4 (and Table 6) E_V Test using,

$$\dot{Q}_c^{k=v}(T_j) = \dot{Q}_c^{k=v}(87) + M_Q \cdot (T_j - 87) \qquad (4.1.4\text{-}3)$$

$$\dot{E}_c^{k=v}(T_j) = \dot{E}_c^{k=v}(87) + M_E \cdot (T_j - 87) \qquad (4.1.4\text{-}4)$$

where $\dot{Q}_c^{k=v}(87)$ and $\dot{E}_c^{k=v}(87)$ are determined from the E_V Test and calculated as specified in section 3.3. Approximate the slopes of the k = v intermediate speed cooling capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} \cdot (1 - N_Q)\right] + \left[N_Q \cdot \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95-82}\right]$$

$$M_E = \left[\frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} \cdot (1 - N_E)\right] + \left[N_E \cdot \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82}\right]$$

where,

$$N_Q = \frac{\dot{Q}_c^{k=v}(87) - \dot{Q}_c^{k=1}(87)}{\dot{Q}_c^{k=2}(87) - \dot{Q}_c^{k=1}(87)}, \text{ and}$$

$$N_E = \frac{\dot{E}_c^{k=v}(87) - \dot{E}_c^{k=1}(87)}{\dot{E}_c^{k=2}(87) - \dot{E}_c^{k=1}(87)}.$$

Calculating Equation 4.1–1 quantities

$$\frac{q_c(T_j)}{N} \text{ and } \frac{e_c(T_j)}{N}$$

differs depending upon whether the test unit would operate at minimum speed (section 4.1.4.1), operate at an intermediate speed (section 4.1.4.2), or operate at maximum speed (section 4.1.4.3) in responding to the building load. Use Equation 4.1–2 to calculate the building load, $BL(T_j)$, for each temperature bin.

4.1.4.1 Steady-state space cooling capacity when operating at minimum compressor speed is greater than or equal to the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) \geq BL(T_j)$.

$$\frac{q_c(T_j)}{N} = X^{k=1}(T_j) \cdot \dot{Q}_c^{k=1}(T_j) \cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \frac{X^{k=1}(T_j) \cdot \dot{E}_c^{k=1}(T_j)}{PLF_j} \cdot \frac{n_j}{N}$$

where,

$X^{k=1}(T_j) = BL(T_j) / \dot{Q}_c^{k=1}(T_j)$, the cooling mode minimum speed load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D^c \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

n_j/N = fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 16. Use Equations 4.1.4–1 and 4.1.4–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. If the optional tests described in section 3.2.4 and Table 6 are not conducted, set the cooling mode cyclic degradation coefficient, C_D^c, to the default value specified in section 3.5.3. If these optional tests are conducted, set C_D^c to the lower of:

a. The value calculated according to section 3.5.3; or

b. The section 3.5.3 default value of 0.25.

4.1.4.2 Unit operates at an intermediate compressor speed (k=i) in order to match the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=i}(T_j) \cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_c^{k=i}(T_j) \cdot \frac{n_j}{N}$$

where,

$\dot{Q}_c^{k=i}(T_j) = BL(T_j)$, the space cooling capacity delivered by the unit in matching the building load at temperature T_j, Btu/h. The matching occurs with the unit operating at compressor speed k = i.

$$\dot{E}_c^{k=i}(T_j) = \frac{\dot{Q}_c^{k=i}(T_j)}{EER^{k=i}(T_j)},$$

the electrical power input required by the test unit when operating at a compressor speed of k = i and temperature T_j, W.

$EER^{k=i}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at a compressor speed of k = i and temperature T_j, Btu/h per W.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 16. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER^{k=i}(T_j)$ using, $EER^{k=i}(T_j) = A + B \cdot T_j + C \cdot T_j^2$.

For each unit, determine the coefficients A, B, and C by conducting the following calculations once:

$$D = \frac{T_2^2 - T_1^2}{T_v^2 - T_1^2}$$

$$B = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - D \cdot [EER^{k=1}(T_1) - EER^{k=v}(T_v)]}{T_1 - T_2 - D \cdot (T_1 - T_v)}$$

$$C = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - B \cdot (T_1 - T_2)}{T_1^2 - T_2^2}$$

$$A = EER^{k=2}(T_2) - B \cdot T_2 - C \cdot T_2^2$$

where,

T_1 = the outdoor temperature at which the unit, when operating at minimum compressor speed, provides a space cooling capacity that is equal to the

building load ($\dot{Q}_c^{k=1}(T_1) = BL(T_1)$), °F. Determine T_1 by equating Equations 4.1.4–1 and 4.1–2 and solving for outdoor temperature.

T_v = the outdoor temperature at which the unit, when operating at the intermediate compressor speed used during the section 3.2.4 E_V Test, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=v}(T_v) = BL(T_v)$), °F. Determine T_v by equating Equations 4.1.4–3 and 4.1–2 and solving for outdoor temperature.

T_2 = the outdoor temperature at which the unit, when operating at maximum compressor speed, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=2}(T_2) = BL(T_2)$), °F. Determine T_2 by equating Equations 4.1.3–3 and 4.1–2 and solving for outdoor temperature.

$$EER^{k=1}(T_1) = \frac{\dot{Q}_c^{k=1}(T_1)\left[\text{Eqn. 4.1.4-1, substituting } T_1 \text{ for } T_j\right]}{\dot{E}_c^{k=1}(T_1)\left[\text{Eqn. 4.1.4-2, substituting } T_1 \text{ for } T_j\right]}, \text{ Btu/h per W.}$$

$$EER^{k=v}(T_v) = \frac{\dot{Q}_c^{k=v}(T_v)\left[\text{Eqn. 4.1.4-3, substituting } T_v \text{ for } T_j\right]}{\dot{E}_c^{k=v}(T_v)\left[\text{Eqn. 4.1.4-4, substituting } T_v \text{ for } T_j\right]}, \text{ Btu/h per W.}$$

$$EER^{k=2}(T_2) = \frac{\dot{Q}_c^{k=2}(T_2)\left[\text{Eqn. 4.1.3-3, substituting } T_2 \text{ for } T_j\right]}{\dot{E}_c^{k=2}(T_2)\left[\text{Eqn. 4.1.3-4, substituting } T_2 \text{ for } T_j\right]}, \text{ Btu/h per W.}$$

4.1.4.3 Unit must operate continuously at maximum (k=2) compressor speed at temperature Tj, $BL(T_j) \geq \dot{Q}_c^{k=2}(T_j)$. Evaluate the Equation 4.1–1 quantities

$$\frac{q_c(T_j)}{N} \text{ and } \frac{e_c(T_j)}{N}$$

as specified in section 4.1.3.4 with the understanding that $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$ correspond to maximum compressor speed operation and are derived from the results of the tests specified in section 3.2.4.

4.2 Heating Seasonal Performance Factor (HSPF) Calculations. Unless an approved alternative rating method is used, as set forth in 10 CFR 430.24(m), Subpart B, HSPF must be calculated as follows: Six generalized climatic regions are depicted in Figure 2 and otherwise defined in Table 17. For each of these regions and for each applicable standardized design heating requirement, evaluate the heating seasonal performance factor using,

$$HSPF = \frac{\sum_j^J n_j \cdot BL(T_j)}{\sum_j^J e_h(T_j) + \sum_j^J RH(T_j)} \cdot F_{def} = \frac{\sum_j^J \left[\frac{n_j}{N} \cdot BL(T_j)\right]}{\sum_j^J \frac{e_h(T_j)}{N} + \sum_j^J \frac{RH(T_j)}{N}} \cdot F_{def} \qquad (4.2\text{-}1)$$

where,

$e_h(T_j)/N$=

The ratio of the electrical energy consumed by the heat pump during periods of the space heating season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season (N), W. For heat pumps having a heat comfort controller, this ratio may also include electrical energy used by resistive elements to maintain a minimum air delivery temperature (see 4.2.5).

$RH(T_j)/N$=

The ratio of the electrical energy used for resistive space heating during periods when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season (N), W. Except as noted in section 4.2.5, resistive space heating is modeled as being used to meet that portion of the building load that the heat pump does not meet because of insufficient capacity or because the heat pump automatically turns off at the lowest outdoor temperatures. For heat pumps having a heat comfort controller, all or part of the electrical energy used by resistive heaters at a particular bin temperature may be reflected in $e_h(T_j)/N$ (see 4.2.5).

T_j = the outdoor bin temperature, °F. Outdoor temperatures are "binned" such that calculations are only performed based one temperature within the bin. Bins of 5 °F are used.

n_j/N=

Fractional bin hours for the heating season; the ratio of the number of hours during the heating season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season, dimensionless. Obtain n_j/N values from Table 17.

j = the bin number, dimensionless.

J = for each generalized climatic region, the total number of temperature bins, dimensionless. Referring to Table 17, J is the highest bin number (j) having a nonzero entry for the fractional bin hours for the generalized climatic region of interest.

F_{def} = the demand defrost credit described in section 3.9.2, dimensionless.

$BL(T_j)$ = the building space conditioning load corresponding to an outdoor temperature of T_j; the heating season building load also depends on the generalized climatic region's outdoor design temperature and the design heating requirement, Btu/h.

TABLE 17.—GENERALIZED CLIMATIC REGION INFORMATION

		I	II	III	IV	V	VI
Region Number							
Heating Load Hours, HLH		750	1250	1750	2250	2750	*2750
Outdoor Design Temperature, T_{OD}		37	27	17	5	−10	30
j	T_j (°F)	Fractional Bin Hours, n_j/N					
1	62	.291	.215	.153	.132	.106	.113
2	57	.239	.189	.142	.111	.092	.206
3	52	.194	.163	.138	.103	.086	.215

TABLE 17.—GENERALIZED CLIMATIC REGION INFORMATION—Continued

4	47	.129	.143	.137	.093	.076	.204
5	42	.081	.112	.135	.100	.078	.141
6	37	.041	.088	.118	.109	.087	.076
7	32	.019	.056	.092	.126	.102	.034
8	27	.005	.024	.047	.087	.094	.008
9	22	.001	.008	.021	.055	.074	.003
10	17	0	.002	.009	.036	.055	0
11	12	0	0	.005	.026	.047	0
12	7	0	0	.002	.013	.038	0
13	2	0	0	.001	.006	.029	0
14	−3	0	0	0	.002	.018	0
15	−8	0	0	0	.001	.010	0
16	−13	0	0	0	0	.005	0
17	−18	0	0	0	0	.002	0
18	−23	0	0	0	0	.001	0

* Pacific Coast Region.

Evaluate the building heating load using

$$BL(T_j) = \frac{(65 - T_j)}{65 - T_{OD}} \cdot C \cdot DHR \qquad (4.2\text{-}2)$$

where,

T_{OD} = the outdoor design temperature, °F. An outdoor design temperature is specified for each generalized climatic region in Table 17.

C = 0.77, a correction factor which tends to improve the agreement between calculated and measured building loads, dimensionless.

DHR = the design heating requirement (see Definition 1.22), Btu/h.

Calculate the minimum and maximum design heating requirements for each generalized climatic region as follows:

$$DHR_{min} = \left\{ \begin{array}{ll} \dot{Q}_h^k(47) \cdot \left[\frac{65 - T_{OD}}{60}\right], & \text{for Regions I, II, III, IV, \& VI} \\ \dot{Q}_h^k(47), & \text{for Region V} \end{array} \right\} \text{Rounded to the nearest standardized DHR given in Table 18.}$$

and

$$DHR_{max} = \left\{ \begin{array}{ll} 2 \cdot \dot{Q}_h^k(47) \cdot \left[\frac{65 - T_{OD}}{60}\right], & \text{for Regions I, II, III, IV, \& VI} \\ 2.2 \cdot \dot{Q}_h^k(47), & \text{for Region V} \end{array} \right\} \text{Rounded to the nearest standardized DHR given in Table 18.}$$

where $\dot{Q}_h^k(47)$ is expressed in units of Btu/h and otherwise defined as follows:

1. For a single-speed heat pump tested as per section 3.6.1, $\dot{Q}_h^k(47) = \dot{Q}_h(47)$, the space heating capacity determined from the H1 Test.

2. For a variable-speed heat pump, a section 3.6.2 single-speed heat pump, or a two-capacity heat pump not covered by item 3, $\dot{Q}_n^k(47) = \dot{Q}_n^{k=2}(47)$, the space heating capacity determined from the $H1_2$ Test.

3. For two-capacity, northern heat pumps (see Definition 1.46), $\dot{Q}_h^k(47) = \dot{Q}_h^{k=1}(47)$, the space heating capacity determined from the $H1_1$ Test.

If the optional $H1_N$ Test is conducted on a variable-speed heat pump, the manufacturer has the option of defining $\dot{Q}_h^k(47)$ as specified above in item 2 or as $\dot{Q}_h^k(47) = \dot{Q}_h^{k=N}(47)$, the space heating capacity determined from the $H1_N$ Test.

For all heat pumps, HSPF accounts for the heating delivered and the energy consumed by auxiliary resistive elements when operating below the balance point. This condition occurs when the building load exceeds the space heating capacity of the heat pump condenser. For HSPF calculations for all heat pumps, see either section 4.2.1, 4.2.2, 4.2.3, or 4.2.4, whichever applies.

For heat pumps with heat comfort controllers (see Definition 1.28), HSPF also accounts for resistive heating contributed when operating above the heat-pump-plus-comfort-controller balance point as a result of maintaining a minimum supply temperature. For heat pumps having a heat comfort controller, see section 4.2.5 for the additional steps required for calculating the HSPF.

TABLE 18.—STANDARDIZED DESIGN HEATING REQUIREMENTS (BTU/H)

5,000	25,000	50,000	90,000
10,000 ...	30,000	60,000	100,000
15,000 ...	35,000	70,000	110,000

TABLE 18.—STANDARDIZED DESIGN HEATING REQUIREMENTS (BTU/H)—Continued

20,000 ...	40,000	80,000	130,000

4.2.1 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed.

$$\frac{e_h(T_j)}{N} = \frac{X(T_j)\cdot \dot{E}_h(T_j)\cdot \delta(T_j)}{PLF_j}\cdot\frac{n_j}{N} \qquad (4.2.1\text{-}1)$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - \left[X(T_j)\cdot \dot{Q}_h(T_j)\cdot \delta(T_j)\right]}{3.413\,\frac{Btu/h}{W}}\cdot\frac{n_j}{N} \qquad (4.2.1\text{-}2)$$

where,

$$X(T_j) = \left\{\begin{array}{c} BL(T_j)/\dot{Q}_h(T_j) \\ \text{or} \\ 1 \end{array}\right\}$$

whichever is less; the heating mode load factor for temperature bin j, dimensionless.

$\dot{Q}_h(T_j)$ = the space heating capacity of the heat pump when operating at outdoor temperature T_j, Btu/h.

$\dot{E}_h(T_j)$ = the electrical power consumption of the heat pump when operating at outdoor temperature T_j, W.

$\delta(T_j)$ = the heat pump low temperature cut-out factor, dimensionless.

$PLF_j = 1 - \dot{C}_D{}^h \cdot [1 - X(T_j)]$ the part load factor, dimensionless.

Use Equation 4.2–2 to determine $BL(T_j)$. Obtain fractional bin hours for the heating season, n_j/N, from Table 17. If the optional H1C Test described in section 3.6.1 is not conducted, set the heating mode cyclic degradation coefficient, $C_D{}^h$, to the default value specified in section 3.8.1. If this optional test is conducted, set $C_D{}^h$ to the lower of:

a. The value calculated according to section 3.8.1 or

b. The section 3.8.1 default value of 0.25.

Determine the low temperature cut-out factor using

$$\delta(T_j) = \begin{cases} 0, \text{ if } T_j \le T_{off} \text{ or } \dfrac{\dot{Q}_h(T_j)}{3.413\cdot \dot{E}_h(T_j)} < 1 \\ 1/2, \text{ if } T_{off} < T_j \le T_{on} \text{ and } \dfrac{\dot{Q}_h(T_j)}{3.413\cdot \dot{E}_h(T_j)} \ge 1 \\ 1, \text{ if } T_j > T_{on} \text{ and } \dfrac{\dot{Q}_h(T_j)}{3.413\cdot \dot{E}_h(T_j)} \ge 1 \end{cases} \qquad (4.2.1\text{-}3)$$

where,

T_{off} = the outdoor temperature when the compressor is automatically shut off, °F.

T_{on} = the outdoor temperature when the compressor is automatically turned back on, if applicable, following an automatic shut-off, °F. (If no such temperature exists, T_j is always greater than T_{off} and T_{on}).

Calculate $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using,

$$\dot{Q}_h(T_j) = \begin{cases} \dot{Q}_h(17) + \dfrac{\left[\dot{Q}_h(47) - \dot{Q}_h(17)\right]\cdot(T_j - 17)}{47 - 17}, \text{ if } T_j \ge 45\ ^\circ F \text{ or } T_j \le 17\ ^\circ F \\ \\ \dot{Q}_h(17) + \dfrac{\left[\dot{Q}_h(35) - \dot{Q}_h(17)\right]\cdot(T_j - 17)}{35 - 17}, \text{ if } 17\ ^\circ F < T_j < 45\ ^\circ F \end{cases} \qquad (4.2.1\text{-}4)$$

$$\dot{E}_h(T_j) = \begin{cases} \dot{E}_h(17) + \dfrac{\left[\dot{E}_h(47) - \dot{E}_h(17)\right]\cdot(T_j - 17)}{47 - 17}, \text{ if } T_j \ge 45\ ^\circ F \text{ or } T_j \le 17\ ^\circ F \\ \\ \dot{E}_h(17) + \dfrac{\left[\dot{E}_h(35) - \dot{E}_h(17)\right]\cdot(T_j - 17)}{35 - 17}, \text{ if } 17\ ^\circ F < T_j < 45\ ^\circ F \end{cases} \qquad (4.2.1\text{-}5)$$

where $\dot{Q}_h(47)$ and $\dot{E}_h(47)$ are determined from the H1 Test and calculated as specified in section 3.7; $\dot{Q}_h(35)$ and $\dot{E}_h(35)$ are determined from the H2 Test and calculated as specified in section 3.9.1; and $\dot{Q}_h(17)$ and $\dot{E}_h(17)$ are determined from the H3 Test and calculated as specified in section 3.10.

4.2.2 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan. The manufacturer must provide information about how the indoor air volume rate or the indoor fan speed varies over the outdoor temperature range of 65 °F to − 23 °F. Calculate the quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

in Equation 4.2–1 as specified in section 4.2.1 with the exception of replacing references to the H1C Test and section 3.6.1 with the $H1C_1$ Test and section 3.6.2. In addition, evaluate the space heating capacity and electrical power consumption of the heat pump $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using

$$\dot{Q}_h(T_j) = \dot{Q}_h^{k=1}(T_j) + \frac{\dot{Q}_h^{k=2}(T_j) - \dot{Q}_h^{k=1}(T_j)}{FP_h^{k=2} - FP_h^{k=1}} \cdot \left[FP_h(T_j) - FP_h^{k=1}\right] \qquad (4.2.2\text{-}1)$$

$$\dot{E}_h(T_j) = \dot{E}_h^{k=1}(T_j) + \frac{\dot{E}_h^{k=2}(T_j) - \dot{E}_h^{k=1}(T_j)}{FP_h^{k=2} - FP_h^{k=1}} \cdot \left[FP_h(T_j) - FP_h^{k=1}\right] \qquad (4.2.2\text{-}2)$$

where the space heating capacity and electrical power consumption at both low capacity (k=1) and high capacity (k=2) at outdoor temperature Tj are determined using

$$\dot{Q}_h^k(T_j) = \begin{cases} \dot{Q}_h^k(17) + \dfrac{\left[\dot{Q}_h^k(47) - \dot{Q}_h^k(17)\right] \cdot (T_j - 17)}{47 - 17}, & \text{if } T_j \geq 45\ ^\circ\text{F or } T_j \leq 17\ ^\circ\text{F} \\ \dot{Q}_h^k(17) + \dfrac{\left[\dot{Q}_h^k(35) - \dot{Q}_h^k(17)\right] \cdot (T_j - 17)}{35 - 17}, & \text{if } 17\ ^\circ\text{F} < T_j < 45\ ^\circ\text{F} \end{cases} \qquad (4.2.2\text{-}3)$$

$$\dot{E}_h^k(T_j) = \begin{cases} E_h^k(17) + \dfrac{\left[\dot{E}_h^k(47) - \dot{E}_h^k(17)\right] \cdot (T_j - 17)}{47 - 17}, & \text{if } T_j \geq 45\ ^\circ\text{F or } T_j \leq 17\ ^\circ\text{F} \\ \dot{E}_h^k(17) + \dfrac{\left[\dot{E}_h^k(35) - \dot{E}_h^k(17)\right] \cdot (T_j - 17)}{35 - 17}, & \text{if } 17\ ^\circ\text{F} < T_j < 45\ ^\circ\text{F} \end{cases} \qquad (4.2.2\text{-}4)$$

For units where indoor fan speed is the primary control variable, $FP_h^{k=1}$ denotes the fan speed used during the required $H1_1$ and $H3_1$ Tests (see Table 10), $FP_h^{k=2}$ denotes the fan speed used during the required $H1_2$, $H2_2$, and $H3_2$ Tests, and $FP_h(T_j)$ denotes the fan speed used by the unit when the outdoor temperature equals T_j. For units where indoor air volume rate is the primary control variable, the three FP_h's are similarly defined only now being expressed in terms of air volume rates rather than fan speeds. Determine $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ Test, and $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ Test. Calculate all four quantities as specified in section 3.7. Determine $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ as specified in section 3.6.2; determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ and from the $H2_2$ Test and the calculation specified in section 3.9. Determine $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17$ from the $H3_1$ Test, and $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ Test. Calculate all four quantities as specified in section 3.10.

4.2.3 Additional steps for calculating the HSPF of a heat pump having a two-capacity compressor. The calculation of the Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

differs depending upon whether the heat pump would operate at low capacity (section 4.2.3.1), cycle between low and high capacity (Section 4.2.3.2), or operate at high capacity (sections 4.2.3.3 and 4.2.3.4) in responding to the building load. For heat pumps that lock out low capacity operation at low outdoor temperatures, the manufacturer must supply information regarding the cutoff temperature(s) so that the appropriate equations can be selected.

a. Evaluate the space heating capacity and electrical power consumption of the heat pump when operating at low compressor capacity and outdoor temperature T_j using

$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(47) + \dfrac{\left[\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)\right]\cdot(T_j - 47)}{62-47}, & \text{if } T_j \geq 40\ ^\circ F \\ \dot{Q}_h^{k=1}(17) + \dfrac{\left[\dot{Q}_h^{k=1}(35) - \dot{Q}_h^{k=1}(17)\right]\cdot(T_j - 17)}{35-17}, & \text{if } 17\ ^\circ F \leq T_j < 40\ ^\circ F \\ \dot{Q}_h^{k=1}(17) + \dfrac{\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)\right]\cdot(T_j - 17)}{47-17}, & \text{if } T_j < 17\ ^\circ F \end{cases}$$

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(47) + \dfrac{\left[\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)\right]\cdot(T_j - 47)}{62-47}, & \text{if } T_j \geq 40\ ^\circ F \\ \dot{E}_h^{k=1}(17) + \dfrac{\left[\dot{E}_h^{k=1}(35) - \dot{E}_h^{k=1}(17)\right]\cdot(T_j - 17)}{35-17}, & \text{if } 17\ ^\circ F \leq T_j < 40\ ^\circ F \\ \dot{E}_h^{k=1}(17) + \dfrac{\left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)\right]\cdot(T_j - 17)}{47-17}, & \text{if } T_j < 17\ ^\circ F \end{cases}$$

b. Evaluate the space heating capacity and electrical power consumption ($\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$) of the heat pump when operating at high compressor capacity and outdoor temperature Tj by solving Equations 4.2.2–3 and 4.2.2–4, respectively, for k=2. Determine $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ from the $H0_1$ Test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ Test, and $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ Test. Calculate all six quantities as specified in section 3.7. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ Test and, if required as described in section 3.6.3, determine $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ from the $H2_1$ Test. Calculate the required 35 °F quantities as specified in section 3.9. Determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ Test and, if required as described in section 3.6.3, determine $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ from the $H3_1$ Test. Calculate the required 17 °F quantities as specified in section 3.10.

4.2.3.1 Steady-state space heating capacity when operating at low compressor capacity is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$.

$$\frac{e_h(T_j)}{N} = \frac{X^{k=1}(T_j)\cdot\dot{E}_h^{k=1}(T_j)\cdot\delta'(T_j)}{PLF_j}\cdot\frac{n_j}{N} \qquad (4.2.3\text{-}1)$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j)\cdot\left[1-\delta'(T_j)\right]}{3.413\,\frac{Btu/h}{W}}\cdot\frac{n_j}{N} \qquad (4.2.3\text{-}2)$$

where,

$X^{k=1}(T_j) = BL(T_j) / \dot{Q}_h^{k=1}(T_j)$, the heating mode low capacity load factor for temperature bin *j*, dimensionless.

$PLF_j = 1 - C_D{}^h \cdot [\,1 - X^{k=1}(T_j)\,]$, the part load factor, dimensionless.

$\delta'(T_j)$ = the low temperature cutoff factor, dimensionless.

If the optional $H0C_1$ Test described in section 3.6.3 is not conducted, set the heating mode cyclic degradation coefficient, $C_D{}^h$, to the default value specified in section 3.8.1.

If this optional test is conducted, set $C_D{}^h$ to the lower of:

a. The value calculated according to section 3.8.1; or

b. The section 3.8.1 default value of 0.25.

Determine the low temperature cut-out factor using

$$\delta'(T_j) = \begin{cases} 0, & \text{if } T_j \leq T_{off} \\ 1/2, & \text{if } T_{off} < T_j \leq T_{on} \\ 1, & \text{if } T_j > T_{on} \end{cases} \qquad (4.2.3\text{-}3)$$

where T_{off} and T_{on} are defined in section 4.2.1. Use the calculations given in section 4.2.3.3, and not the above, if:

(a) The heat pump locks out low capacity operation at low outdoor temperatures and

(b) T_j is below this lockout threshold temperature.

4.2.3.2 Heat pump alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building heating load

at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) \leq \dot{Q}_h^{k=2}(T_j)$.
Calculate

$$\frac{RH(T_j)}{N}$$

using Equation 4.2.3–2. Evaluate

$$\frac{e_h(T_j)}{N}$$

using

$$\frac{e_h(T_j)}{N} = \left[X^{k=1}(T_j) \cdot \dot{E}_h^{k=1}(T_j) + X^{k=2}(T_j) \cdot \dot{E}_h^{k=2}(T_j)\right] \cdot \delta'(T_j) \cdot \frac{n_j}{N}$$

where,

$$X^{k=1}(T_j) = \frac{\dot{Q}_h^{k=2}(T_j) - BL(T_j)}{\dot{Q}_h^{k=2}(T_j) - \dot{Q}_h^{k=1}(T_j)}$$

$X^{k=2}(T_j) = 1 - X^{k=1}(T_j)$ the heating mode, high capacity load factor for temperature bin $_j$, dimensionless.

Determine the low temperature cut-out factor, $\delta'(T_j)$, using Equation 4.2.3–3.

4.2.3.3 Heat pump only operates at high (k=2) compressor capacity at temperature T_j and its capacity is greater than the building heating load, $BL(T_j) < \dot{Q}_h^{k=2}(T_j)$. This section applies to units that lock out low compressor capacity operation at low outdoor temperatures. Calculate

$$\frac{RH(T_j)}{N}$$

using Equation 4.2.3–2. Evaluate

$$\frac{e_h(T_j)}{N}$$

using

$$\frac{e_h(T_j)}{N} = \frac{X^{k=2}(T_j) \cdot \dot{E}_h^{k=2}(T_j) \cdot \delta(T_j)}{PLF_j} \cdot \frac{n_j}{N}$$

where,
$X^{k=2}(T_j) = BL(T_j)/\dot{Q}_h^{k=2}(T_j)$.
$PLF_j = 1 - C_D^h [1 - X^{k=2}(T_j)]$.

When evaluating the above equation for part load factor at high capacity, use the same value of C_D^h as used in the section 4.2.3.1 calculations. Determine the low temperature cut-out factor, $\delta'(T_j)$, using Equation 4.2.3–3.

4.2.3.4 Heat pump must operate continuously at high (k=2) compressor capacity at temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$.

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=2}(T_j) \cdot \delta'(T_j) \cdot \frac{n_j}{N}$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - \left[\dot{Q}_h^{k=2}(T_j) \cdot \delta'(T_j)\right]}{3.413\ \frac{Btu/h}{W}} \cdot \frac{n_j}{N}$$

Where

$$\delta'(T_j) = \begin{cases} 0, & \text{if } T_j \leq T_{off} \text{ or } \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 \cdot \dot{E}_h^{k=2}(T_j)} < 1 \\ 1/2, & \text{if } T_{off} < T_j \leq T_{on} \text{ and } \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 \cdot \dot{E}_h^{k=2}(T_j)} \geq 1 \\ 1, & \text{if } T_j > T_{on} \text{ and } \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 \cdot \dot{E}_h^{k=2}(T_j)} \geq 1 \end{cases}$$

4.2.4 Additional steps for calculating the HSPF of a heat pump having a variable-speed compressor. Calculate HSPF using Equation 4.2–1. Evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed and outdoor temperature T_j using

$$\dot{Q}_h^{k=1}(T_j) = \dot{Q}_h^{k=1}(47) + \frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62 - 47} \cdot (T_j - 47) \qquad (4.2.4\text{-}1)$$

$$\dot{E}_h^{k=1}(T_j) = \dot{E}_h^{k=1}(47) + \frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62 - 47} \cdot (T_j - 47) \qquad (4.2.4\text{-}2)$$

where $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ are determined from the $H0_1$ Test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_1$ Test, and all four quantities are calculated as specified in section 3.7. Evaluate the space heating capacity, $\dot{Q}_h^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=2}(T_j)$, of the heat pump when operating at maximum compressor speed and outdoor temperature T_j by solving Equations 4.2.2–3 and 4.2.2–4, respectively, for k=2. Determine the Equation 4.2.2–3 and 4.2.2–4 quantities $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ Test and the calculations specified in section 3.7. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ Test and the calculations specified in section 3.9 or, if the $H2_2$ Test is not conducted, by conducting the calculations specified in section 3.6.4.

Determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ Test and the calculations specified in section 3.10. Calculate the space heating capacity, $\dot{Q}_h^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=v}(T_j)$, of the heat pump when operating at outdoor temperature T_j and the intermediate compressor speed used during the section 3.6.4 $H2_v$ Test using

$$\dot{Q}_h^{k=v}(T_j) = \dot{Q}_h^{k=v}(35) + M_Q \cdot (T_j - 35) \qquad (4.2.4\text{-}3)$$

$$\dot{E}_h^{k=v}(T_j) = \dot{E}_h^{k=v}(35) + M_E \cdot (T_j - 35) \qquad (4.2.4\text{-}4)$$

where $\dot{Q}_h^{k=v}(35)$ and $\dot{E}_h^{k=v}(35)$ are determined from the $H2_V$ Test and calculated as specified in section 3.9. Approximate the slopes of the k=v intermediate speed heating capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62-47} \cdot (1 - N_Q)\right] + \left[\frac{N_Q \cdot \dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=2}(17)}{35-17}\right]$$

$$M_E = \left[\frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62-47} \cdot (1 - N_E)\right] + \left[\frac{N_E \cdot \dot{E}_h^{k=2}(35) - \dot{E}_h^{k=2}(17)}{35-17}\right]$$

where,

$$N_Q = \frac{\dot{Q}_h^{k=v}(35) - \dot{Q}_h^{k=1}(35)}{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=1}(35)}, \text{ and}$$

$$N_E = \frac{\dot{E}_h^{k=v}(35) - \dot{E}_h^{k=1}(35)}{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=1}(35)}.$$

Use Equations 4.2.4–1 and 4.2.4–2, respectively, to calculate $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$.

The calculation of Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

differs depending upon whether the heat pump would operate at minimum speed (section 4.2.4.1), operate at an intermediate speed (section 4.2.4.2), or operate at maximum speed (section 4.2.4.3) in responding to the building load.

4.2.4.1 Steady-state space heating capacity when operating at minimum compressor speed is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$. Evaluate the Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

as specified in section 4.2.3.1. Except now use Equations 4.2.4–1 and 4.2.4–2 to evaluate $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$, respectively, and replace section 4.2.3.1 references to "low capacity" and section 3.6.3 with "minimum speed" and section 3.6.4. Also, the last sentence of section 4.2.3.1 does not apply.

4.2.4.2 Heat pump operates at an intermediate compressor speed (k=i) in order to match the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$. Calculate

$$\frac{RH(T_j)}{N}$$

using Equation 4.2.3–2 while evaluating

$$\frac{e_h(T_j)}{N}$$

using,

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=1}(T_j) \cdot \delta(T_j) \cdot \frac{n_j}{N}$$

where,

$$\dot{E}_h^{k=i}(T_j) = \frac{\dot{Q}_h^{k=i}(T_j)}{3.413 \frac{Btu/h}{W} \cdot COP^{k=i}(T_j)}$$

and $\delta(T_j)$ is evaluated using Equation 4.2.3–3 while,

$\dot{Q}_h^{k=i}(T_j) = BL(T_j)$, the space heating capacity delivered by the unit in matching the building load at temperature (T_j), Btu/h. The matching occurs with the heat pump operating at compressor speed k=i.

$COP^{k=i}(T_j)$ = the steady-state coefficient of performance of the heat pump when operating at compressor speed k=i and temperature T_j, dimensionless.

For each temperature bin where the heat pump operates at an intermediate compressor speed, determine $COP^{k=i}(T_j)$ using,

$COP^{k=i}(T_j) = A + B \cdot T_j + C \cdot T_j^2$.

For each heat pump, determine the coefficients A, B, and C by conducting the following calculations once:

$$D = \frac{T_3^2 - T_4^2}{T_{vh}^2 - T_4^2}$$

$$B = \frac{COP^{k=2}(T_4) - COP^{k=1}(T_3) - D \cdot \left[COP^{k=2}(T_4) - COP^{k=v}(T_{vh})\right]}{T_4 - T_3 - D \cdot (T_4 - T_{vh})}$$

where,

T_3 = the outdoor temperature at which the heat pump, when operating at minimum compressor speed, provides a space heating capacity that is equal to the building load ($\dot{Q}_h^{k=1}(T_3) = BL(T_3)$), °F.

Determine T_3 by equating Equations 4.2.4–1 and 4.2–2 and solving for:

$$C = \frac{COP^{k=2}(T_4) - COP^{k=1}(T_3) - B \cdot (T_4 - T_3)}{T_4^2 - T_3^2}$$

$$A = COP^{k=2}(T_4) - B \cdot T_4 - C \cdot T_4^2.$$

outdoor temperature.

T_{vh} = the outdoor temperature at which the heat pump, when operating at the intermediate compressor speed used during the section 3.6.4 $H2_V$ Test, provides a space heating capacity that is equal to the building load ($\dot{Q}_h^{k=v}(T_{vh}) = BL(T_{vh})$), °F. Determine T_{vh} by equating Equations 4.2.4–3 and 4.2–2 and solving for outdoor temperature.

T_4 = the outdoor temperature at which the heat pump, when operating at maximum compressor speed, provides a space heating capacity that is equal to the building load ($\dot{Q}_h^{k=2}(T_4) = BL(T_4)$), °F. Determine T_4 by equating Equations 4.2.2–3 (k=2) and 4.2–2 and solving for outdoor temperature.

$$COP^{k=1}(T_3) = \frac{\dot{Q}_h^{k=1}(T_3)\left[\text{Eqn. 4.2.4-1, substituting } T_3 \text{ for } T_j\right]}{3.413\frac{Btu/h}{W} \cdot \dot{E}_h^{k=1}(T_3)\left[\text{Eqn. 4.2.4-2, substituting } T_3 \text{ for } T_j\right]}$$

$$COP^{k=v}(T_{vh}) = \frac{\dot{Q}_h^{k=v}(T_{vh})\left[\text{Eqn. 4.2.4-3, substituting } T_{vh} \text{ for } T_j\right]}{3.413\frac{Btu/h}{W} \cdot \dot{E}_h^{k=v}(T_{vh})\left[\text{Eqn. 4.2.4-4, substituting } T_{vh} \text{ for } T_j\right]}$$

$$COP^{k=2}(T_4) = \frac{\dot{Q}_h^{k=2}(T_4)\left[\text{Eqn. 4.2.2-3, substituting } T_4 \text{ for } T_j\right]}{3.413\frac{Btu/h}{W} \cdot \dot{E}_h^{k=2}(T_4)\left[\text{Eqn. 4.2.2-4, substituting } T_4 \text{ for } T_j\right]}$$

4.2.4.3 Heat pump must operate continuously at maximum (k=2) compressor speed at temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$. Evaluate the Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

as specified in section 4.2.3.4 with the understanding that $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ correspond to maximum compressor speed operation and are derived from the results of the specified section 3.6.4 tests.

4.2.5 Heat pumps having a heat comfort controller. Heat pumps having heat comfort controllers, when set to maintain a typical minimum air delivery temperature, will cause the heat pump condenser to operate less because of a greater contribution from the resistive elements. With a conventional heat pump, resistive heating is only initiated if the heat pump condenser cannot meet the building load (*i.e.*, is delayed until a second stage call from the indoor thermostat). With a heat comfort controller, resistive heating can occur even though the heat pump condenser has adequate capacity to meet the building load (*i.e.*, both on during a first stage call from the indoor thermostat). As a result, the outdoor temperature where the heat pump compressor no longer cycles (*i.e.*, starts to run continuously), will be lower than if the heat pump did not have the heat comfort controller.

4.2.5.1 Heat pump having a heat comfort controller: additional steps for calculating the HSPF of a heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed. Calculate the space heating capacity and electrical power of the heat pump without the heat comfort controller being active as specified in section 4.2.1 (Equations 4.2.1–4 and 4.2.1–5) for each outdoor bin temperature, T_j, that is listed in Table 17. Denote these capacities and electrical powers by using the subscript "hp" instead of "h." Calculate the mass flow rate (expressed in pounds-mass of dry air per hour) and the specific heat of the indoor air (expressed in $Btu/lbm_{da} \cdot °F$) from the results of the H1 Test using:

$$\dot{m}_{da} = \dot{\bar{V}}_s \cdot 0.075\ \frac{lbm_{da}}{ft^3} \cdot \frac{60\ min}{hr} = \frac{\dot{\bar{V}}_{mx}}{v'_n \cdot [1 + W_n]} \cdot \frac{60\ min}{hr} = \frac{\dot{\bar{V}}_{mx}}{v_n} \cdot \frac{60\ min}{hr}$$

$$C_{p,da} = 0.24 + 0.444 \cdot W_n$$

where $\dot{\bar{V}}_s$, $\dot{\bar{V}}_{mx}$, v'_n (or v_n), and W_n are defined following Equation 3–1. For each outdoor bin temperature listed in Table 17, calculate the nominal temperature of the air leaving the heat pump condenser coil using,

$$T_o(T_j) = 70\ °F + \frac{\dot{Q}_{hp}(T_j)}{\dot{m}_{da} \cdot C_{p,da}}.$$

Evaluate $e_h(T_j/N)$, $RH(T_j)/N$, $X(T_j)$, PLF_j, and $\delta(T_j)$ as specified in section 4.2.1. For each bin calculation, use the space heating capacity and electrical power from Case 1 or Case 2, whichever applies.

Case 1. For outdoor bin temperatures where $T_o(T_j)$ is equal to or greater than T_{CC} (the maximum supply temperature determined according to section 3.1.9), determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ as specified in section 4.2.1 (*i.e.*, $\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j)$ and $\dot{E}_h(T_j) = \dot{E}_{hp}(T_j)$). Note: Even though $T_o(T_j) \geq T_{cc}$, resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

Case 2. For outdoor bin temperatures where $T_o(T_j) > T_{cc}$, determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using,

$$\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j) + \dot{Q}_{CC}(T_j)$$

$$\dot{E}_h(T_j) = \dot{E}_{hp}(T_j) + \dot{E}_{CC}(T_j)$$

where,

$$\dot{Q}_{CC}(T_j) = \dot{m}_{da} \cdot C_{p,da} \cdot \left[T_{CC} - T_o(T_j)\right]$$

$$\dot{E}_{CC}(T_j) = \frac{\dot{Q}_{CC}(T_j)}{3.413\ \frac{Btu}{W \cdot h}}$$

Note: Even though $T_o(T_j) < T_{cc}$, additional resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

4.2.5.2 Heat pump having a heat comfort controller: additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan. Calculate the space heating capacity and electrical power of the heat pump without the heat comfort controller being active as specified in section 4.2.2 (Equations 4.2.2–1 and 4.2.2–2) for each outdoor bin temperature, T_j, that is listed in Table 17. Denote these capacities and electrical powers by using the subscript "hp" instead of "h." Calculate the mass flow rate (expressed in pounds-mass of dry air per hour) and the specific heat of the indoor air (expressed in Btu/lbm$_{da}$ · °F) from the results of the $H1_2$ Test using:

$$\dot{m}_{da} = \overline{\dot{V}}_s \cdot 0.075\ \frac{lbm_{da}}{ft^3} \cdot \frac{60\ min}{hr} = \frac{\overline{\dot{V}}_{mx}}{v'_n \cdot \left[1 + W_n\right]} \cdot \frac{60\ min}{hr} = \frac{\overline{\dot{V}}_{mx}}{v_n} \cdot \frac{60\ min}{hr}$$

$$C_{p,da} = 0.24 + 0.444 \cdot W_n$$

where $\overline{\dot{V}}_s$, $\overline{\dot{V}}_{mx}$, v'_n (or v_n), and W_n are defined following Equation 3–1. For each outdoor bin temperature listed in Table 17, calculate the nominal temperature of the air leaving the heat pump condenser coil using,

$$T_o(T_j) = 70\ °F + \frac{\dot{Q}_{hp}(T_j)}{\dot{m}_{da} \cdot C_{p,da}}.$$

Evaluate $e_h(T_j)/N$, $RH(T_j)/N$, $X(T_j)$, PLF_j, and $\delta(T_j)$ as specified in section 4.2.1 with the exception of replacing references to the H1C Test and section 3.6.1 with the $H1C_1$ Test and section 3.6.2. For each bin calculation, use the space heating capacity and electrical power from Case 1 or Case 2, whichever applies.

Case 1. For outdoor bin temperatures where $T_o(T_j)$ is equal to or greater than T_{CC} (the maximum supply temperature determined according to section 3.1.9), determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ as specified in section 4.2.2 (*i.e.* $\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j)$ and $\dot{E}_h(T_j) = \dot{E}_{hp}(T_j)$). Note: Even though $T_o(T_j) \geq T_{CC}$, resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

Case 2. For outdoor bin temperatures where $T_o(T_j) < T_{CC}$, determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using,

$\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j) + \dot{Q}_{CC}(T_j)$

$\dot{E}_h(T_j) = \dot{E}_{hp}(T_j) + \dot{E}_{CC}(T_j)$

where,

$\dot{Q}_{CC}(T_j) = \dot{m}_{da} \cdot C_{p,da} \cdot [T_{CC} - T_o(T_j)]$

$$\dot{E}_{CC}(T_j) = \frac{\dot{Q}_{CC}(T_j)}{3.413\ \frac{Btu}{W \cdot h}}.$$

Note: Even though $T_o(T_j) < T_{cc}$, additional resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

4.2.5.3 Heat pumps having a heat comfort controller: additional steps for calculating the HSPF of a heat pump having a two-capacity compressor. Calculate the space heating capacity and electrical power of the heat pump without the heat comfort controller being active as specified in section 4.2.3 for both high and low capacity and at each outdoor bin temperature, T_j, that is listed in Table 17. Denote these capacities and electrical powers by using the subscript "hp" instead of "h." For the low capacity case, calculate the mass flow rate (expressed in pounds-mass of dry air per hour) and the specific heat of the indoor air (expressed in Btu/lbm$_{da}$ · °F) from the results of the $H1_1$ Test using:

$$\dot{m}_{da}^{k=1} = \overline{\dot{V}}_s \cdot 0.075 \frac{lbm_{da}}{ft^3} \cdot \frac{60\ min}{hr} = \frac{\overline{\dot{V}}_{mx}}{v'_n \cdot \left[1 + W_n\right]} \cdot \frac{60\ min}{hr} = \frac{\overline{\dot{V}}_{mx}}{v_n} \cdot \frac{60\ min}{hr}$$

$$C_{p,da}^{k=1} = 0.24 + 0.444 \cdot W_n$$

where $\overline{\dot{V}}_s$, $\overline{\dot{V}}_{mx}$, v'_n (or v_n), and W_n are defined following Equation 3–1. For each outdoor bin temperature listed in Table 17, calculate the nominal temperature of the air leaving the heat pump condenser coil when operating at low capacity using,

$$T_o^{k=1}(T_j) = 70\ °F + \frac{\dot{Q}_{hp}^{k=1}(T_j)}{\dot{m}_{da}^{k=1} \cdot C_{p,da}^{k=1}}.$$

Repeat the above calculations to determine the mass flow rate ($\dot{m}_{da}{}^{k=2}$) and the specific heat of the indoor air ($C_{p,da}{}^{k=2}$) when operating at high capacity by using the results of the $H1_2$ Test. For each outdoor bin temperature listed in Table 17, calculate the nominal temperature of the air leaving the heat pump condenser coil when operating at high capacity using,

$$T_o^{k=2}(T_j) = 70\ °F + \frac{\dot{Q}_{hp}^{k=2}(T_j)}{\dot{m}_{da}^{k=2} \cdot C_{p,da}^{k=2}}.$$

Evaluate $e_h(T_j)/N$, $RH(T_j)/N$, $X^{k=1}(T_j)$, and/or $X^{k=2}(T_j)$, PLF_j, and $\delta'(T_j)$ or $\delta''(T_j)$ as specified in section 4.2.3.1. 4.2.3.2, 4.2.3.3, or 4.2.3.4, whichever applies, for each temperature bin. To evaluate these quantities, use the low-capacity space heating capacity and the low-capacity electrical power from Case 1 or Case 2, whichever applies; use the high-capacity space heating capacity and the high-capacity electrical power from Case 3 or Case 4, whichever applies.

Case 1. For outdoor bin temperatures where $T_o^{k=1}(T_j)$ is equal to or greater than T_{CC} (the maximum supply temperature determined according to section 3.1.9), determine $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$ as specified in section 4.2.3 (*i.e.*, $\dot{Q}_h^{k=1}(T_j) = \dot{Q}_{hp}^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j) = \dot{E}_{hp}^{k=1}(T_j)$.

Note: Even though $T_o^{k=1}(T_j) \geq T_{CC}$, resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

Case 2. For outdoor bin temperatures where $T_o^{k=1}(T_j) < T_{CC}$, determine $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$ using,

$\dot{Q}_h^{k=1}(T_j) = \dot{Q}_{hp}^{k=1}(T_j) + \dot{Q}_{CC}^{k=1}(T_j)$

$\dot{E}_h^{k=1}(T_j) = \dot{E}_{hp}^{k=1}(T_j) + \dot{E}_{CC}^{k=1}(T_j)$

where,

$$\dot{Q}_{CC}^{k=1}(T_j) = \dot{m}_{da}^{k=1} \cdot C_{p,da}^{k=1} \cdot \left[T_{CC} - T_o^{k=1}(T_j)\right]$$

$$\dot{E}_{CC}^{k=1}(T_j) = \frac{\dot{Q}_{CC}^{k=1}(T_j)}{3.413\,\frac{Btu}{W \cdot h}}.$$

Note: Even though $T_o^{k=1}(T_j) \geq T_{cc}$, additional resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

Case 3. For outdoor bin temperatures where $T_o^{k=2}(T_j)$ is equal to or greater than T_{CC}, determine $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ as specified in section 4.2.3 (*i.e.*, $\dot{Q}_h^{k=2}(T_j) = \dot{Q}_{hp}^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j) = \dot{E}_{hp}^{k=2}(T_j)$). Note: Even though $T_o^{k=2}(T_j) < T_{CC}$, resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

Case 4. For outdoor bin temperatures where $T_o^{k=2}(T_j) < T_{CC}$, determine $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ using,

$$\dot{Q}_h^{k=2}(T_j) = \dot{Q}_{hp}^{k=2}(T_j) + \dot{Q}_{CC}^{k=2}(T_j)$$

$$\dot{E}_h^{k=2}(T_j) = \dot{E}_{hp}^{k=2}(T_j) + \dot{E}_{CC}^{k=2}(T_j)$$

where,

$$\dot{Q}_{CC}^{k=2}(T_j) = \dot{m}_{da}^{k=2} \cdot C_{p,da}^{k=2} \cdot \left[T_{CC} - T_o^{k=2}(T_j)\right]$$

$$\dot{E}_{CC}^{k=2}(T_j) = \frac{\dot{Q}_{CC}^{k=2}(T_j)}{3.413\,\frac{Btu}{W \cdot h}}.$$

Note: Even though $T_o^{k=2}(T_j) < T_{cc}$, additional resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

4.2.5.4 Heat pumps having a heat comfort controller: additional steps for calculating the HSPF of a heat pump having a variable-speed compressor. [Reserved]

4.3 Calculations of the Actual and Representative Regional Annual Performance Factors for Heat Pumps.

4.3.1 Calculation of actual regional annual performance factors (APF_A) for a particular location and for each standardized design heating requirement.

$$APF_A = \frac{CLH_A \cdot \dot{Q}_c^k(95) + HLH_A \cdot DHR \cdot C}{\frac{CLH_A \cdot \dot{Q}_c^k(95)}{SEER} + \frac{HLH_A \cdot DHR \cdot C}{HSPF}}$$

where,

CLH_A = the actual cooling hours for a particular location as determined using the map given in Figure 3, hr.

$\dot{Q}_c^k(95)$ = the space cooling capacity of the unit as determined from the A or A_2 Test, whichever applies, Btu/h.

HLH_A = the actual heating hours for a particular location as determined using the map given in Figure 2, hr.

DHR = the design heating requirement used in determining the HSPF; refer to section 4.2 and Definition 1.22, Btu/h.

C = defined in section 4.2 following Equation 4.2–2, dimensionless.

SEER = the seasonal energy efficiency ratio calculated as specified in section 4.1, Btu/W·h.

HSPF = the heating seasonal performance factor calculated as specified in section 4.2 for the generalized climatic region that includes the particular location of interest (see Figure 2), Btu/W·h. The HSPF should correspond to the actual design heating requirement (DHR), if known. If it does not, it may correspond to one of the standardized design heating requirements referenced in section 4.2.

4.3.2 Calculation of representative regional annual performance factors (APF_R) for each generalized climatic region and for each standardized design heating requirement.

$$APF_R = \frac{CLH_R \cdot \dot{Q}_c^k(95) + HLH_R \cdot DHR \cdot C}{\frac{CLH_R \cdot \dot{Q}_c^k(95)}{SEER} + \frac{HLH_R \cdot DHR \cdot C}{HSPF}}$$

where,

CLH_R = the representative cooling hours for each generalized climatic region, Table 19, hr.

HLH_R = the representative heating hours for each generalized climatic region, Table 19, hr.

HSPF = the heating seasonal performance factor calculated as specified in section 4.2 for the each generalized climatic region and for each standardized design heating requirement within each region, Btu/W.h.

The SEER, $\dot{Q}_c^k(95)$, DHR, and C are the same quantities as defined in section 4.3.1. Figure 2 shows the generalized climatic regions. Table 18 lists standardized design heating requirements.

TABLE 19.—REPRESENTATIVE COOLING AND HEATING LOAD HOURS FOR EACH GENERALIZED CLIMATIC REGION

Region	CLH_R	HLH_R
I	2400	750
II	1800	1250
III	1200	1750

TABLE 19.—REPRESENTATIVE COOLING AND HEATING LOAD HOURS FOR EACH GENERALIZED CLIMATIC REGION—Continued

Region	CLH_R	HLH_R
IV	800	2250
V	400	2750
VI	200	2750

4.4. Rounding of SEER, HSPF, and APF for reporting purposes. After calculating SEER according to section 4.1, round it off as specified in subpart B 430.23(m)(3)(i) of Title 10 of the Code of Federal Regulations. Round section 4.2 HSPF values and section 4.3 APF values as per § 430.23(m)(3)(ii) and (iii) of Title 10 of the Code of Federal Regulations.

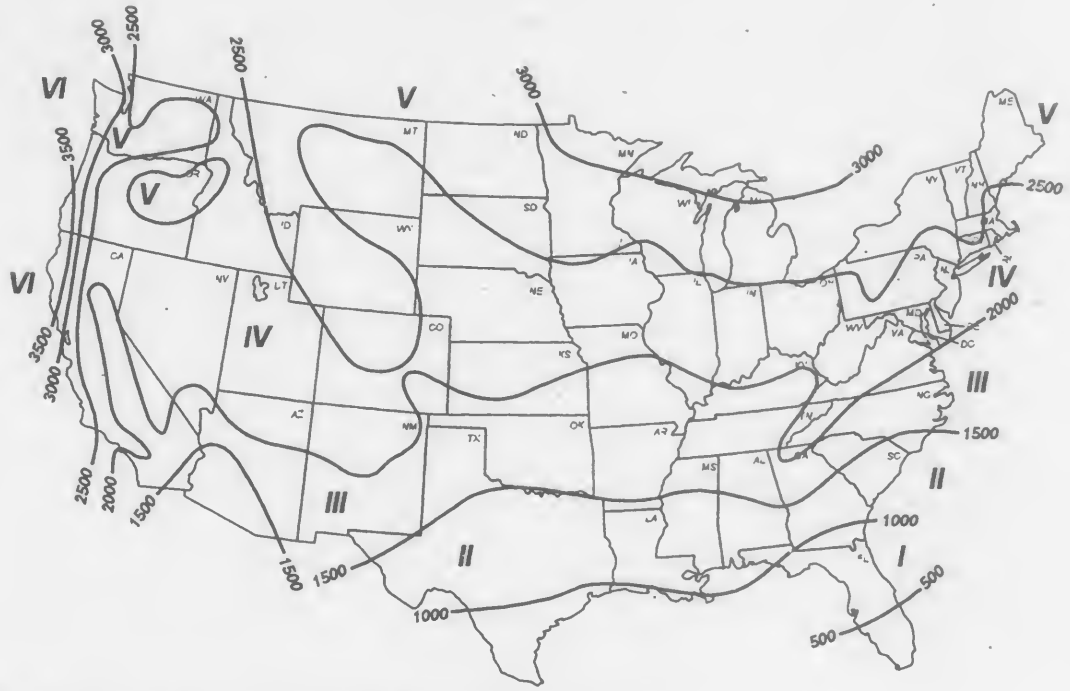

Figure 2 Heating Load Hours (HLH_A) for the United States

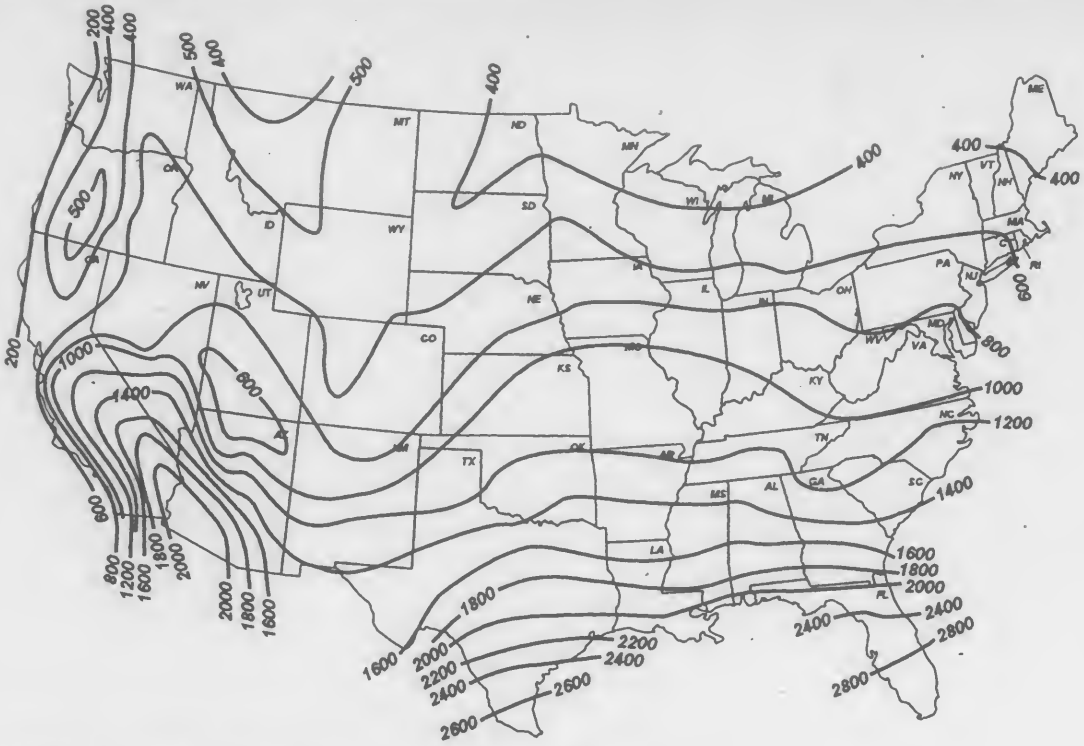

Figure 3 Cooling Load Hours (CLH_A) for the United States

■ 6. Section 430.32 of subpart C is amended by revising the section heading and adding introductory text to paragraph (c) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(c) *Central air conditioners and heat pumps.* The energy conservation standards defined in terms of the heating seasonal performance factor are based on Region IV, the minimum standardized design heating requirement, and the sampling plan stated in § 430.24(m).

* * * * *

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 411

Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships; Exceptions for Certain Electronic Prescribing and Electronic Health Records Arrangements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–1303–P]

RIN 0938–AN69

Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships; Exceptions for Certain Electronic Prescribing and Electronic Health Records Arrangements

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

ACTION: Proposed rule.

SUMMARY: As required by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), this proposed rule would create an exception to the physician self-referral prohibition in section 1877 of the Social Security Act (the Act) for certain arrangements in which a physician receives necessary non-monetary remuneration that is used solely to receive and transmit electronic prescription drug information. In addition, using our separate legal authority under section 1877(b)(4) of the Act, we are proposing two separate regulatory exceptions for electronic health records software and directly related training services. These exceptions are consistent with the President's goal of achieving widespread adoption of interoperable electronic health records for the purpose of improving the quality and efficiency of health care, while maintaining the levels of security and privacy that consumers expect.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 12, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1303–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1303–P, PO Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1303–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Linda Howard, (410) 786–5255.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code [CMS–1303–P] and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Open Door Forum: We are planning to schedule an Open Door Forum early in the comment period to discuss the benefits and risks of donating electronic prescribing and electronic health records technology. Please note, however, that our planned Open Door Forum is in addition to, and not in lieu of, the public comment process discussed above. To be assured consideration, please forward your written comments by the close of the comment period.

I. Background

[If you choose to comment on issues in this section, please include the caption "Background" at the beginning of your comment.]

Section 1877 of the Act, also known as the physician self-referral law: (1) Prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership interest or compensation arrangement), unless an exception applies; and (2) prohibits the entity from submitting claims to Medicare for those referred services, unless an exception applies. The statute establishes a number of exceptions and grants the Secretary the authority to create additional regulatory exceptions for financial relationships that do not pose a risk of program or patient abuse. When enacted in 1989, the physician self-referral law applied only to physician referrals for clinical laboratory services under Medicare when made to an entity with which the physician (or an immediate family member) had a financial relationship. In

1993 and 1994, the Congress expanded the prohibition to include ten additional DHS and added section 1903(s) of the Act, which extended aspects of the referral prohibition to the Medicaid program.

Section 1877 of the Act, as it applies to referrals for eleven DHS, has been in effect and subject to enforcement since January 1, 1995. On August 14, 1995, we published a final rule with comment period in the **Federal Register** (60 FR 41914) that incorporated into regulations the physician self-referral prohibition as it applied to clinical laboratory services. That final rule did not address the other DHS. On January 9, 1998, we published a proposed rule in the **Federal Register** (63 FR 1659) to revise the regulations to cover the additional DHS and the Medicaid expansion. On January 4, 2001, we published the "Phase I" final rule with comment period in the **Federal Register** (66 FR 856). Phase I addressed the general prohibition on physician self-referrals and the statutory exceptions applicable to both ownership and compensation arrangements, defined key terms, and created a number of new regulatory exceptions. With two exceptions, the regulations published in Phase I became effective on January 4, 2002.[1] On March 26, 2004, we published the "Phase II" interim final rule with comment period in the **Federal Register** (69 FR 16054), which became effective on July 26, 2004. Phase II addressed the statutory exceptions related to ownership and investment interests, the statutory exceptions for certain compensation arrangements, and the reporting requirements. Phase II also created some new regulatory exceptions and addressed public comments on Phase I.

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added a new section 1860D to the Act establishing a prescription drug benefit in the Medicare program. As part of the new legislation, the Congress directed the Secretary in section 1860D–4(e)(4) of the Act to adopt standards for electronic prescribing in connection with the new prescription drug benefit with the objective of improving patient safety, quality of care, and efficiency in the delivery of care. (H.R. Conf. Rep. No. 108–391, at 455, 456 (2003).) Section 1860D–4(e)(6) of the Act directs the Secretary, in consultation with the Attorney General, to create an exception to the physician self-referral prohibition and a safe harbor under the anti-kickback statute (section 1128B(b) of the Act) to protect certain arrangements involving the provision of non-monetary remuneration (consisting of items and services in the form of hardware, software, or information technology and training services) that is necessary and used solely to receive and transmit electronic prescription drug information in accordance with electronic prescribing standards published by the Secretary under section 1860D–4(e)(4) of the Act. We note that, depending on the circumstances, provisions in the existing physician self-referral regulations may provide sufficient protection for the donation of these items and services to physicians.

This proposed rule sets forth the terms and conditions of the MMA-mandated physician self-referral exception for certain arrangements involving the donation of electronic prescribing technology. The MMA-mandated anti-kickback statute safe harbor is being implemented in a separate rulemaking by the Office of Inspector General (OIG). We have attempted to ensure as much consistency as possible between our proposed electronic prescribing exception and the corresponding safe harbor proposed by OIG, given the differences in the respective underlying statutes. We intend the final rules to be similarly consistent.

Section 1877(b)(4) of the Act authorizes the Secretary to create regulatory exceptions for financial relationships that he determines do not pose a risk of program or patient abuse. Using this authority, this proposed rule also sets forth terms and conditions for two separate physician self-referral exceptions for certain arrangements involving the donation of electronic health records software and directly related training services. Information technology, and electronic health records in particular, supports treatment choices for consumers and enables better and more cost-effective care, while maintaining the levels of security and privacy that consumers expect. We seek to encourage the adoption of such technology through this proposed rulemaking. We also intend to monitor the progress made toward fully interoperable electronic health records systems, as we believe that systems that are fully interoperable and certified can mitigate many of our concerns regarding the potential anti-competitive effects of stand-alone electronic health records systems.

II. Provisions of the Proposed Rule

As required by section 101 of the MMA, this proposed rule would add new paragraph (v) to § 411.357. New paragraph (v) would describe more specifically: (1) The items and services protected by the new electronic prescribing exception mandated under section 101 of the MMA; (2) the conditions under which offering these items and services to physicians would be protected; and (3) the DHS entities and referring physicians covered by the electronic prescribing exception.

In addition, using our separate legal authority under section 1877(b)(4) of the Act, we are proposing two separate exceptions at § 411.357(w) and § 411.357(x) for electronic health records software and training services that are not covered by the MMA-mandated exception. New paragraphs (w) and (x) would describe more specifically: (1) The items and services protected by the new electronic health records exceptions; (2) the individuals and entities that may provide the protected items and services; and (3) the conditions under which the provision of items and services to physicians would be protected.

The proposed exceptions at § 411.357(v), § 411.357(w), and § 411.357(x) would, if implemented, create independent grounds for protection under the physician self-referral prohibition. For the convenience of the public, we are providing the following chart that lays out schematically the overall structure and approach of these proposed regulations, details of which are provided below in Sections II.A. and B. of this proposed rule. Readers are cautioned that the exceptions contain additional conditions and information not summarized here.

[1] Revised § 424.22(d), relating to home health services, became effective on April 6, 2001 (see our **Federal Register** notice dated February 2, 2001 (66 FR 8771)). In addition, the effective date of the final sentence of § 411.354(d)(1) relating to the definition of "set in advances" was delayed several times. The sentence never went into effect and was deleted in the Phase II regulation, effective July 26, 2004.

	MMA-mandated electronic prescribing exception	Pre-interoperability electronic health records exception	Post-interoperability electronic health records exception
Authority for Proposed Exception ..	Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.	Section 1877(b)(4) of the Social Security Act.	Section 1877(b)(4) of the Social Security Act.
Covered Technology	*Proposed:* • Items and services that are necessary and used solely to transmit and receive electronic prescription drug information. • Includes hardware, software, internet connectvity, and training and support services.	*Proposed:* • Software used solely for the transmission, receipt or maintenance of electronic health records. • Directly-related training services. • Software *must* include an electronic prescribing component.	*Proposed:* • *Certified* electronic health records software • Directly-related training services • Software *must* include an electronic prescribing component • Could include billing and scheduling software, provided that the core function of the software is electronic health records.
Standards With Which Donated Technology Must Comply	*Proposed:* • Foundation standards for electronic prescribing as adopted by the Secretary.	*Proposed:* • Electronic prescribing component must comply with foundation standards for electronic prescribing as adopted by the Secretary.	*Proposed:* • Product certification criteria adopted by the Secretary. • Electronic prescribing component must comply with foundation standards for electronic prescribing as adopted by the Secretary, to the extent these standards are not fully incorporated into the product certification criteria.
Permissible Donors	*Proposed:* • As required by statute, hospitals (to members of their medical staffs), group practices (to physician members), PDP sponsors and MA organizations (to Physicians).	*Proposed:* • Hospitals to members of their medical staffs. • Group practices to physician members. • PDP sponsors. • MA organizations.	*Proposed:* • Hospitals to members of their medical staffs. • Group practices to physician members. • PDP sponsors. • MA organizations.
Selection of Recipients	*Proposed:* • Donors may not take into account the volume or value of referrals from the recipient or other business between the parties.	*Proposed:* • Donors may not take into account the volume or value of referrals from the recipient or other business between the parties.	*Proposed:* • Donors may use criteria to select recipients that are not directly related to the volume or value of referrals or other business generated between the parties.
Value of Protected Technology	*Proposed:* • No specific dollar amount proposed for a cap on the value of protected technology.	*Proposed:* • No specific dollar amount proposed for a cap on the value of protected items and services.	*Proposed:* • No specific dollar amount proposed for a cap on the value of protected items and services. • May be greater than the cap on preinteroperability donations.

A. Exception for Certain Arrangements Involving Electronic Prescribing Technology: § 411.357(v)

[If you choose to comment on issues in this section, please include the caption "Electronic Prescribing Exception: § 411.357(v)" at the beginning of your comment.]

The Congress, in mandating the creation of an electronic prescribing exception under the physician self-referral law, recognized the value of electronic prescription programs as a vehicle to reduce medical errors and to improve efficiencies in the health care system. (H.R. Conf. Rep. No. 108–391, at 456 (2003).) We believe that promoting the rapid adoption of electronic prescribing for Medicare Part D is beneficial to both health care providers and patients, and we have interpreted the mandate accordingly.

1. Protected Non-Monetary Remuneration

Section 1860D–4(e)(6) of the Act authorizes the creation of an exception only for the provision of items and services that are "necessary and used solely" to transmit and receive electronic prescription drug information. This proposed rule would clarify the items and services that would qualify for the new exception ("qualifying electronic prescribing technology").

a. "Necessary" Non-Monetary Remuneration

First, consistent with the MMA mandate, the proposed exception would protect only items or services that are "necessary" to conduct electronic prescription drug transactions. This might include, for example, hardware, software, broadband or wireless internet connectivity, training, information technology support services, and other items and services used in connection with the transmission or receipt of electronic prescribing information. The exception would not protect arrangements in which DHS entities provide items or services that are technically or functionally equivalent to items that the receiving physician already possesses or services that the physician has already obtained. For example, we believe the exception would allow a hospital to provide a physician with a hand-held device capable of transmitting electronic prescribing information, even though the physician may already have a desktop computer that could also be used to send the same information. By contrast, the provision of a second hand-held device would not qualify for the exception if the physician already

possesses a hand-held device that could run the new software. We do not interpret the term "necessary" to preclude upgrades of equipment or software that significantly enhance the functionality of the item or service.

We believe that restricting the exception to "necessary" items and services is important to minimize the potential for abuse. However, we recognize that the donors of the items and services will not necessarily know which items and services the physician already possesses or has obtained. Accordingly, § 411.357(v)(7)(iv) would require the physician to certify that the items and services provided are not technically or functionally equivalent to those that the physician already possesses or has already obtained. The physician must update the certification prior to the furnishing of any necessary upgrades or items and services not reflected in the original certification. We are concerned that the certification process would be ineffective as a safeguard against fraud and abuse if it is a mere formality or if physicians simply execute a form certification provided by the DHS entity. The certification must be truthful, and we are proposing at § 411.357(v)(8) that the DHS entity must not have actual knowledge of, or act in reckless disregard or deliberate ignorance of, the fact that the physician possessed or had obtained items and services that were technically or functionally equivalent to those donated by the entity. We are soliciting comments about other ways to address this concern.

We are also concerned that there may be a risk that physicians would intentionally divest themselves of functionally or technically equivalent technology that they already possess in order to shift costs to the DHS entity. We are soliciting public comments on how best to address this issue.

b. "Used Solely"

In addition to the "necessary" standard, section 1860D–4(e)(6) of the Act provides that the items and services must be "used solely" for the transmission or receipt of electronic prescribing information. We believe that the Congress included this requirement to safeguard against abusive arrangements in which the remunerative technology might constitute a payment for referrals because it might have additional value attributable to uses other than electronic prescribing. Accordingly, the proposed exception at § 411.357(v) requires that the protected items and services be used solely to transmit or receive electronic prescribing information.

We are concerned that DHS entities might provide free or reduced cost software that bundles valuable general office management, billing, scheduling, or other software with the electronic prescribing features. Such additional remuneration would not meet the "used solely" requirement and would not be protected by the proposed electronic prescribing exception. However, the physician would not be precluded from purchasing from the DHS entity for fair market value additional technology not protected by the proposed exception.

We are mindful that hardware and connectivity services can be used for the receipt and transmission of a wide range of information services, including, but not limited to, electronic prescription information, and that many physicians may prefer to use a single, multi-functional device, especially a hand-held, rather than multiple single-use devices. Similarly, many physicians may prefer to use a single connectivity service. Accordingly, we are proposing to use our authority under section 1877(b)(4) of the Act to create an additional exception to protect the provision by DHS entities to physicians of hardware (including necessary operating system software) and connectivity services that are used for more than one function, so long as a substantial use of the item or service is to receive or transmit electronic prescription information. We propose to treat operating software as integral to the hardware and distinct from other software applications that are not necessary for the hardware to operate. Under this additional exception, protection would not extend to the provision of items or services that are only occasionally used for electronic prescribing. The additional exception would incorporate the definitions and conditions set forth in this proposed rulemaking and would also include conditions to address the additional risk of abuse posed by multi-functional items and services.

We are soliciting public comment about the standards that should appear in an additional exception for multi-functional hardware (including necessary operating system software) or connectivity services. In particular, we are soliciting public comment on methodologies for quantifying or ensuring that a substantial use of hardware and connectivity services is for the receipt or transmission of electronic prescribing information. We have considered how to quantify "substantial use" with respect to other provisions of the Act and its implementing regulations; here, we are specifically seeking comments regarding an appropriate definition of "substantial use" in the context of electronic prescribing technology and its use. We are also soliciting public comment on the nature and amount of any cap that we should impose on the value of the donated multi-functional hardware or connectivity services.

2. Designated Health Services (DHS) Entities Protected by the Exception

In addition to describing the kinds of electronic prescribing technology that can be protected, section 1860D–4(e)(6) of the Act limits the kinds of entities that may provide this assistance, and the persons to whom assistance can be provided. Specifically, the statutory provision protects the donation of qualifying electronic prescribing technology when the donation is made by hospitals to members of their medical staffs, by group practices to their physician members, and by prescription drug plan (PDP) sponsors and Medicare advantage (MA) organizations to pharmacies, pharmacists, and physicians and other prescribing health care professionals.

The proposed regulation text largely mirrors the statutory language except where the statute refers to persons or entities other than physicians (that is, pharmacies, pharmacists, and non-physician prescribing health care professionals). We are proposing to limit the exception at § 411.357(v) to remuneration provided to physicians, because section 1877 of the Act is not implicated when remuneration is provided to non-physician prescribing health care professionals or to pharmacists and pharmacies that are not otherwise affiliated with a referring physician. To the extent that a hospital has a financial relationship with these parties, no exception is necessary. However, arrangements that do not implicate section 1877 of the Act can still violate the anti-kickback statute.

Proposed § 411.357(v)(1)(i) would protect donations of qualifying electronic prescribing technology provided by a hospital to physicians on its medical staff. We intend to protect donations only to physicians who routinely furnish services at the hospital. We do not intend for this exception to protect remuneration used to induce physicians who already practice at other hospitals to join the medical staff of a different hospital. We are soliciting comments on this issue.

Proposed § 411.357(v)(1)(ii) would protect donations of qualifying electronic prescribing technology provided by a group practice to its physician members. For purposes of the new exception, we propose to apply the

existing regulatory definitions of the terms "group practice" and "member of a group practice" (see § 411.352 and § 411.351, respectively). Further, the inclusion of paragraph § 411.357(v)(1)(ii) does not imply that the provision of the items and services by a group to its members necessarily requires a new exception, because the in-office ancillary services exception or the employment exception would apply in most circumstances, where needed. We believe the Congress included these relationships in section 1860D–4(e)(6) of the Act simply to encourage group practices to adopt electronic prescribing technology. We are soliciting comments regarding whether and how a group practice may appropriately furnish qualifying electronic prescribing technology to a "physician in the group practice," as defined at § 411.351.

Proposed § 411.357(v)(1)(iii) would protect donations of qualifying electronic prescribing technology provided by a PDP sponsor or MA organization to prescribing physicians. We note that, in certain circumstances, donations of qualifying electronic prescribing technology may qualify for protection under the existing exception at § 411.355(c). In addition, although section 1860D–4(e)(6) of the Act also applies to the provision of qualifying electronic prescribing technology by PDP sponsors and MA organizations to pharmacies, pharmacists, and non-physician prescribing health care professionals in the plans' networks, these financial relationships do not implicate section 1877 of the Act.

We are soliciting comments on whether we should use our authority under section 1877(b)(4) of the Act to protect qualifying electronic prescribing technology provided to physicians by other DHS entities. Most other DHS services do not appear to involve substantial utilization of prescription drugs. We are interested in comments addressing the types of DHS entities that should be included, the degree of need for the protection, and the safeguards that should be imposed to protect against program or patient abuse.

3. Additional Limitations on the Provision of Electronic Prescribing Technology

a. Promoting Compatibility and Interoperability

Section 1860D–4(e)(6) of the Act is integral to the electronic prescribing program established by section 101 of the MMA. Section 1860D–4(e)(6) of the Act provides that, in order to qualify for the physician self-referral exception, the qualifying electronic prescription technology must be used to receive and transmit electronic prescription information in accordance with standards to be established by the Secretary for Part D electronic prescription drug programs. Consistent with section 1860D–4(e)(6) of the Act, proposed § 411.357(v)(2) would require that the items and services be provided as part of, or be used to access, an electronic prescription drug program that complies with the standards established by the Secretary for these programs. We are soliciting comments on whether the exception should permit qualifying electronic prescribing technology to be used for the transmission of prescription information regarding items and services that are not drugs (for example, supplies or laboratory tests).

Interoperable systems have the technical capacity to transmit and receive information from other devices and applications in a secure and intelligible manner. We believe that interoperability can serve as an important safeguard against fraud and abuse, because a requirement that protected technology be fully interoperable would mitigate the risk that an entity could offer free or reduced price technology to a referring physician as a means of maintaining or increasing that physician's referrals to the entity. With interoperable electronic prescribing technology, the physician would be free to transmit prescriptions to any appropriate pharmacy.

At this time, there are no regulatory standards to ensure that electronic prescription information products are interoperable with other products. However, we note that interoperability may be required in the future under final regulations regarding the standards for the Part D electronic prescription drug program. To the extent that either the hardware or software can be interoperable, we propose at § 411.357(v)(3) to prohibit donors or their agents from taking any actions to disable or limit that interoperability or otherwise impose barriers to compatibility. We believe this condition is necessary to limit the ability of a donor, such as a hospital, to use the provision of items or services to tie the physicians to the facility.

We are considering defining the term "interoperable" to mean the ability of different information systems, software applications, and networks to communicate and exchange information in an accurate, secure, effective, useful, and consistent manner. (See generally 44 U.S.C. § 3601(6) (pertaining to the management and promotion of electronic government services).) We are soliciting public comment about this approach, our definition of the term "interoperable," alternative means of ensuring the maximum level of interoperability, and the types of software currently available for electronic prescribing.

b. Value of Protected Technology

We are considering whether to limit the aggregate fair market value of all items and services provided to a physician from a single donor. We believe a monetary limit is appropriate and reasonable to minimize the potential for fraud and abuse. We are soliciting public comment on the amount of a cap that would adequately protect the program against abuse, the methodology used to determine the cap (for example, fixed dollar amount, percentage of the value of the donated technology, or another methodology), whether the same cap would be adequate if there were protection for the donation of multi-functional hardware and connectivity services, whether the cap should be reduced over time, and whether the cap places a disadvantage on smaller entities that do not have the financial resources of larger chains or organizations.

We are also interested in comments on the retail and nonretail costs of obtaining electronic prescribing technology and the degree to which physicians may already possess items or services that could be used for electronic prescribing. We have received varying estimates of the costs of implementing electronic prescribing through the comment process for our E-Prescribing and the Prescription Drug Program proposed rule published on February 4, 2005 in the **Federal Register** (70 FR 6256). We also have explored the available literature on the costs of implementing electronic prescribing. (See section IV of this preamble.) We caution that the cost of implementing an electronic prescribing program will not correlate necessarily to the amount of any cap if one is established. Moreover, we do not expect that donors will wish necessarily to donate the total amount that the technology costs or, depending on the size of a cap, the total amount ultimately protected in the final rule. Although we are interested in obtaining detailed information about the costs of the full range of technology so as to be fully informed on this matter, we do not expect that the final regulations will protect all possible costs.

c. Other Conditions

We seek to minimize the potential for abuse and to ensure that the protected technology furthers the congressional

purpose of promoting electronic prescribing as a means of improving the quality of care for all patients. We believe that any protected items and services must, to the extent possible, be usable by physicians for electronic prescribing for all patients to ensure that uninsured and non-Medicare patients receive the same benefits that the technology may engender, including reduction of errors and improvements in care. Some donated technology (such as software for tracking prescriptions or formularies of a particular MA organization's patients) may not be applicable to all patients. However, other technology (for example, hand-held devices and software that transmit prescriptions to pharmacies) is potentially usable for all patients, and physicians should not be restricted from using such technology for all patients. Accordingly, proposed § 411.357(v)(4) would require that, where possible, physicians must be able to use the protected technology for all patients without regard to payor status.

Proposed § 411.357(v)(5) would provide that neither the physician nor the physician's practice (including employees and staff members) may make the donation of qualifying electronic prescribing technology items or services a condition of doing business with the entity.

Proposed § 411.357(v)(6) and (v)(7) would incorporate conditions that are consistent with the conditions in the other regulatory exceptions under the physician self-referral prohibition. Paragraph (v)(6) would provide that the eligibility of a physician to receive items and services from a DHS entity, and the amount and nature of the items and services received, may not be determined in a manner that takes into account the volume or value of the physician's referrals to the DHS entity or other business generated between the physician and the DHS entity. This does not preclude selection criteria that are based upon the total number of prescriptions written by a physician, but the proposed regulation would prohibit criteria based upon the volume or value of prescriptions written by the physician that are dispensed or paid by the donor, as well as any criteria based on any other business generated between the parties. We are interested in comments with respect to other potential criteria for selecting medical staff recipients of donated technology. Also, the exception would not protect arrangements that seek to induce a physician to change loyalties from other providers or plans to the donor (for example, a hospital using an electronic prescribing technology arrangement to induce a physician who is on the medical staff of another hospital to join the donor hospital's medical staff for a purpose of referring patients to the donor hospital). Proposed § 411.357(v)(7) would require the arrangement to be in writing, to be signed by the parties, to identify with specificity the items or services being provided and the value of those items and services, and to include the certification described in section II.A.1 of this proposed rule. To permit effective oversight of protected arrangements, the written agreement must cover all of the qualifying electronic prescribing technology to be furnished to the physician by the DHS entity. For example, if a hospital provides a piece of hardware under one arrangement and then subsequently provides a software program, the agreement regarding the software would have to include a description of the previously donated hardware (including its nature and value). In addition, the written agreement must include a certification by the physician that the items and services are not technically or functionally equivalent to any items or services that he or she already possesses or has already obtained.

Proposed § 411.357(v)(8) would provide that the DHS entity must not have actual knowledge of, or act in reckless disregard or deliberate ignorance of, the fact that the physician possessed or had obtained items and services that were technically or functionally equivalent to those donated by the entity. In other words, the DHS entity would not be subject to sanctions under section 1877(g) of the Act if it did not know or have reason to suspect that the physician certification required under § 411.357(v)(7)(iv) was false.

B. Exceptions for Certain Arrangements Involving Electronic Health Records Items and Services: § 411.357(w) and § 411.357(x)

The implementation of electronic health information technology is a compelling national priority to improve our healthcare system. Interoperable electronic health information technology would allow patient information to be portable and to move with consumers from one point of care to another. This would require an infrastructure that can help clinicians gain access to critical health information when treatment decisions are being made, while keeping that information confidential and secure. We believe that the promise of a secure and seamless information exchange that reduces medical errors, improves the quality of patient care, and improves efficiency will be realized only when we have a standardized system that is open, adaptable, interoperable, and predictable.

We believe that interoperable electronic health records technology, once implemented, has the potential to increase health care quality and improve efficiency, which are outcomes consistent with our goals in exploring Pay-for-Performance options. We believe it is important to promote these open, interconnected, interoperable electronic health records systems that help improve the quality of patient care and efficiency in the delivery of health care to patients, without protecting arrangements that hinder marketplace competition, serve as marketing platforms, or are mechanisms to influence inappropriately clinical decision-making.

Accordingly, in addition to the electronic prescribing exception, we are proposing to use our legal authority under section 1877(b)(4) of the Act to promulgate two new exceptions, at § 411.357(w) and § 411.357(x), to protect non-abusive arrangements involving the provision of software and directly related training services that are necessary and used to receive, transmit, and maintain the electronic health records of the entity's or physician's patients. The first exception would apply to donations made before the Secretary's adoption of product certification criteria, including criteria for the interoperability, functionality, and privacy and security of electronic health records technology (these criteria are referred to herein as "product certification criteria"), and would provide limited protection. For purposes of this rulemaking, we will refer to this exception as the "pre-interoperability" exception. The second exception would apply to donations made after product certification criteria are adopted by the Secretary. For purposes of this rulemaking, we will refer to this exception as the "post-interoperability" exception. In recognition of the reduction in the risk of fraud and abuse that may result from interoperable systems, the post-interoperability exception would offer broader protection than the pre-interoperability exception.

We are concerned about the risk of program abuse that may be posed by a DHS entity's provision of valuable technology to physicians. We believe that this risk increases as the value of the technology to the physician increases. The provision of electronic health records technology to physicians poses greater risk of abuse than the provision of limited electronic

prescribing technology, because electronic health records technology is inherently more valuable to physicians in terms of actual cost, avoided overhead, and administrative expenses of an office practice. However, in light of the potential patient benefits of electronic health records, we have attempted to construct exceptions that include several criteria designed to ensure that the exceptions do not pose a risk of program or patient abuse. We will continue to evaluate the risks posed by the donation to physicians of electronic health records technology and may refine or add additional safeguards to the final rule to ensure that the exceptions do not pose a risk of program or patient abuse. We are requesting comments on whether hardware, connectivity and related items and services should also be protected under either or both these exceptions, and, if so, under what conditions.

1. Pre-Interoperability Exception

[If you choose to comment on issues in this section, please include the caption "Pre-Interoperability Electronic Health Records Exception: § 411.357(w)" at the beginning of your comment.]

We wish to recognize the innovative early adopters of electronic health records technology and establish an exception to protect donations of such technology made before the Secretary has adopted product certification criteria for electronic health records. However, as noted above in section II.A.3 with respect to electronic prescribing, it is important that protected electronic health records software be interoperable to the extent technologically feasible and that neither donors nor their agents take any actions to disable or limit interoperability or otherwise impose barriers to compatibility. Unlike electronic prescribing, at this time, there are no proposed Federal regulatory standards for electronic health records, nor are there any product certification criteria with which electronic health records software can comply. Nonetheless, while product certification criteria are being developed, we are proposing the narrow pre-interoperability exception described below to protect certain donations of electronic health records technology in an effort to stimulate and promote the expansion of technology in the health care industry.

a. Covered Technology

We are proposing to protect only electronic health records software, that is, software that is essential to and used solely for the transmission, receipt, or maintenance of patients' electronic health records. To be protected by this exception, the donated electronic health records software must have an electronic prescribing component. The required electronic prescribing component must consist of software that is used to receive and transmit electronically prescription drug information in accordance with electronic prescribing standards published by the Secretary under section 1860D–4(e)(4) of the Act. We are soliciting comments on whether the exception should permit the electronic prescribing component of electronic health record software to be used for the transmission of prescription information regarding items and services that are not drugs (for example, supplies or laboratory tests). Additionally, we are soliciting comments with respect to whether we should also or instead require that electronic health records software include a computerized provider order entry (CPOE) component. We are proposing at § 411.357(w)(8) not to protect the provision of other types of technology, including, for example, hardware, connectivity services, billing or scheduling software, or software that might be used by a physician to conduct personal business or business unrelated to the physician's medical practice. Although the proposed exception would protect necessary training services in connection with the software, the exception would not protect the provision of staff to physicians or their offices.

We are mindful that there may be particular constituencies, such as rural area providers, that lack sufficient hardware or connectivity services to implement effective electronic health records systems. We are soliciting comments addressing these special circumstances.

In order to protect further against abuse, we are considering including in the final regulations a definition of "electronic health records" for purposes of the exception. We are soliciting comments on how we should draft this definition. In particular, we are interested in public comments that address the types of software that should be protected; the retail and nonretail cost of this software; the ways in which this software is currently marketed (for example, individual applications versus bundled software packages); methods for defining the scope of protected software; and safeguards that might be imposed (either in the definition or separately) to ensure that the exception does not pose a risk of program or patient abuse. Finally, we are soliciting public comment on whether and, if so, how to protect the provision of other kinds of electronic health information technology.

We are proposing to interpret "necessary" in the new exception consistent with our interpretation of the term in section II.A.1 of this proposed rule and to include a comparable provision at § 411.357(w)(5)(iv) to ensure that the exception does not protect the provision of items or services that are technically and functionally equivalent to items and services the physician currently possesses or has obtained. As with electronic prescribing technology, we are concerned that there may be a risk that physicians would intentionally divest themselves of functionally or technically equivalent technology that they already possess to shift costs to donors and we are soliciting public comment on whether and how to address this situation.

b. Standards With Which Donated Technology Must Comply

The pre-interoperability exception would require at § 411.357(w)(9) that any protected software must include an electronic prescribing component that complies with standards established by the Secretary for the Part D electronic prescription drug program. Moreover, as with the electronic prescribing exception discussed above, we would require at § 411.357(w)(2) that neither donor entities nor their agents take any actions to disable or limit interoperability of any component of the software or otherwise impose barriers to compatibility. We are also considering requiring protected software to comply with relevant Public Health Information Network preparedness standards, such as those related to BioSense. We are soliciting comments on these and other appropriate standards.

We are interested in comments addressing whether this pre-interoperability exception may have the unintended effect of impeding the beneficial spread of interoperable electronic health records systems by promoting closed or isolated systems or systems that effectively tie physicians to particular providers or suppliers. For example, a hospital that donates expensive technology to a physician may exercise control over that physician sufficient to preclude or discourage other systems or health plans from having access to the physician for their own networks.

c. Permissible Donors

Proposed § 411.357(w) would protect the same categories of donors and physicians as the proposed exception

for electronic prescribing items and services at § 411.357(v). We believe that donors should be limited to hospitals, group practices, PDP sponsors, and MA organizations because they have a direct and primary patient care relationship and therefore have a central role in the health care delivery infrastructure that justifies protection for the furnishing of electronic health records technology that would not be appropriate for other types of providers and suppliers, including providers and suppliers of ancillary services. Moreover, hospitals, group practices, PDP sponsors, and MA organizations are potentially in a better position to promote widespread use of electronic health records technology that has the greatest degree of openness and interoperability. We do not believe that providers and suppliers of ancillary services, such as laboratories, are well-positioned to advance the goal of widespread use of interoperable electronic health records for patients, nor would they have the same interest in doing so. Nevertheless, we are interested in comments regarding whether other categories of donors should be included and why. We are also interested in comments with respect to whether different or alternative conditions should apply to any category of donor. In addition, we note that some donations of electronic health records software and related training services may fit within existing exceptions, including those at § 411.352 (for group practices) and § 411.355(c) (for certain prepaid health plans).

d. Selection of Recipients

We are proposing at § 411.357(w)(4) a condition, consistent with other regulatory exceptions, that the eligibility of a recipient to receive items and services from a donor, and the amount and nature of the items and services received, may not be determined in a manner that takes into account the volume or value of the recipient's referrals to the donor or other business generated between the parties. We are interested in comments with respect to potential criteria for selecting physician recipients of donated electronic health records software and related training services.

e. Value of Protected Technology

We believe it would be appropriate to limit the aggregate value of the protected software and directly related training services that a DHS entity could provide to a physician under the exception. The cap under the proposed pre-interoperability exception would be directly related to any cap adopted in connection with the electronic prescribing exception discussed in section II.A.3. of this proposed rule. We believe this approach is consistent with the purpose of the physician self-referral prohibition and would also minimize any competitive disadvantage for smaller entities that do not have the financial resources or potential volume of technology business of larger chains or organizations.

We are interested in comments regarding the appropriate amount and methodology of a limiting cap. In addition to an aggregate dollar cap, we are considering two alternative approaches: (1) A cap that would be set at a percentage of the value of the donated technology to the physician (thus requiring the physician to share the costs); or (2) a cap set at the lower of a fixed dollar amount or a percentage of the value of the technology to the physician. We are soliciting public comment about this approach, including comments on how a cap under this exception would relate to a cap under the exception proposed at § 411.357(v) and how the value of technology provided under the final exceptions would be aggregated. We are concerned that DHS entities may abuse the proposed exceptions for electronic prescribing items and services and electronic health records software and training services by selectively relying on both exceptions to maximize the value of technology provided to physicians as a means of disguising payments for referrals. We believe conditions should be included in the final regulation to prevent this abuse and are considering requiring an overall cap on value, as well as documentation requirements that integrate all technology provided under the final exceptions. We are interested in public comments that address the retail and nonretail costs (that is, the costs of purchasing from manufacturers, distributors, or other nonretail sources) of obtaining electronic health records software and training services necessary to promote the widespread adoption of electronic health records. We are also interested in comments that address the degree to which physicians may already possess items or services that could be used for electronic health records. In addition, we are soliciting comments on whether and, if so, how to take into account physician access to any software that is publicly available either free or at a reduced price.

f. Other Conditions

To ensure further that this new exception does not pose a risk of program or patient abuse and for the reasons discussed in section II.A.3 of this proposed rule, we are incorporating in § 411.357(w) certain other conditions described above in connection with § 11.357(v). These include a restriction at § 411.357(w)(3) on conditioning business on the receipt of electronic health records technology, a restriction at § 411.357(w)(4) on the provision of items and services related to the volume or value of referrals, a documentation requirement at § 411.357(w)(5), and an all-payors requirement at § 411.357(w)(7). Proposed § 411.357(w)(10) would require that the arrangement not violate the anti-kickback statute (section 1128B(b) of the Act) or any Federal or State law or regulation governing billing or claims submission. Because the provision of valuable items and services to a referral source can be used to induce or reward referrals, compliance with the anti-kickback statute is required to ensure that the protected arrangements do not pose a risk of abuse. This condition is consistent with the other regulatory exceptions to the physician self-referral law and was discussed in the interim final rule published on March 26, 2004 in the **Federal Register** (69 FR 16108). We believe that requiring compliance with the anti-kickback statute is particularly important because of the high dollar value of electronic health records technology.

g. Sunset Provision

We are also proposing a provision at § 411.357(w)(11) that would sunset the pre-interoperability exception applicable to electronic health records software and training services at the time that the post-interoperability exception at § 411.357(x) (see discussion in section II.B.2 of this proposed rule) becomes effective.

2. Post-Interoperability Electronic Health Records Exception

[If you choose to comment on issues in this section, please include the caption "Post-Interoperability Electronic Health Records Exception: § 411.357(x)" at the beginning of your comment.]

We realize that variable (that is, non-standardized) adoption of electronic health records systems could discourage market forces and competition from improving healthcare. Interoperability could mitigate many of our concerns regarding the potential anti-competitive effects of stand-alone electronic health records. We recognize that stand-alone electronic health records systems, even if widely adopted, may not deliver the error reductions, cost savings or marketplace changes necessary to meet the Secretary's goals, and could even shift the market toward more

fragmentation. We believe that only open, interconnected, interoperable electronic health records systems will allow for the free flow of information necessary to realize the full potential benefits of this technology.

We anticipate that a process to identify product certification criteria, including uniform industry standards for interoperability, functionality, and privacy and security, may be completed in the next year. The health information technology contractors and the American Health Information Community (AHIC) will be considering processes to set standards and to certify and inspect electronic health records technology; these processes and standards will be recommended to the Secretary for recognition and adoption. A certified product will meet all of the criteria adopted by the Secretary, including criteria for interoperability, functionality, and privacy and security, through the process recognized by the Secretary. The post-interoperability exception will protect only the donation of certified electronic health records technology. We are soliciting comments on how these processes under development might impact the scope of a final exception for electronic health records.

Once the Secretary adopts product certification criteria for interoperable electronic health records technology, we intend to finalize the exception described below, which offers broader protection specific to the donation of certified electronic health records systems. We discuss below an expanded exception for the donation of electronic health records software that is certified in accordance with the product certification criteria and process adopted by the Secretary.

a. Covered Technology

We are proposing to expand the scope of covered software, potentially including other kinds of software, provided that the core functions of the donated software are electronic prescribing and electronic health records. It is our intent that electronic prescribing and electronic health records be the core functions of the protected donated technology, but we also want to ensure that integrated packages that could positively impact patient care are not excluded from the post-interoperability exception. We intend to protect systems that improve patient care rather than systems comprised solely or primarily of technology that is incidental to the core functions of electronic prescribing and electronic health records. Although the proposed exception would protect necessary training services in connection with the software, we specify at § 411.357(x)(8) that the exception would not protect the provision of staff to physicians or their offices or the provision of items or services used by a physician solely to conduct personal business or business unrelated to the physician's medical practice. We are soliciting public comments on what types of software should be protected under the post-interoperability exception and methods for ensuring that electronic prescribing and electronic health records are the core functions of the donated technology. As with the pre-interoperability exception, we propose at § 411.357(x)(9) that the technology protected under this exception must include an electronic prescribing component, and we are soliciting comments with respect to whether we should also or instead require that electronic health records software include a CPOE component.

b. Standards With Which Donated Technology Must Comply

We are proposing in § 411.357(x)(2) that the donated electronic health records software must be certified in accordance with the product certification criteria adopted by the Secretary. In addition, we propose at § 411.357(x)(9) that the electronic prescribing component must comply with electronic prescribing standards established by the Secretary under the Part D program, to the extent those standards are not incorporated into the product certification criteria adopted by the Secretary. Accordingly, no protection would be available under the post-interoperability exception until product certification criteria are adopted.

c. Permissible Donors

In new § 411.357(x)(1), we are proposing to protect the same categories of donors protected under the pre-interoperability exception as discussed in section II.B.1 of this proposed rule. We are also considering whether to protect additional categories of donors and whether different or alternative conditions should apply to any category of permissible donor. We are interested in comments addressing the types of individuals and entities that should be protected, the degree of need for protection, and the safeguards that should be imposed to protect against fraud and abuse.

d. Selection of Recipients

Because certified, interoperable systems would offer enhanced protection against some types of fraud and abuse, we are proposing to permit donors to use selective criteria for choosing recipients, provided that neither the eligibility of a recipient, nor the amount or nature of the items or services, is determined in a manner that directly takes into account the volume or value of the referrals or other business generated between the parties. Proposed § 411.357(x)(4) would enumerate several selection criteria that would be deemed not to be directly related to volume or value of referrals or other business generated between the parties. For example, selection criteria that are based upon the total number of prescriptions written by a physician would not be precluded, but the proposed regulation would prohibit criteria based upon the number or value of prescriptions written by the physician and dispensed or paid by the DHS entity, as well as criteria based on any other business generated between the parties. Also, the exception would not protect arrangements that seek to induce a physician to change loyalties from other providers or plans to the DHS entity.

We expect that this approach will ensure that donated technology can be targeted at physicians who use it the most, in order to promote a public policy favoring adoption of the technology, while discouraging problematic direct correlations with Medicare referrals (for example, a hospital offering a physician 10 new computers for every 500 referrals of Medicare payable procedures). We caution, however, that outside of the context of electronic health records, as specifically addressed in this proposed rule, and except as permitted in § 411.352(i) (special rules for productivity bonuses and profit shares distributed to group practice physicians), both direct and indirect correlations between the provision of goods or services and the volume or value of referrals or other business generated between the parties are prohibited. We are interested in public comments about this approach, including whether there may be unintended consequences that would inhibit the adoption of interoperable technology or lead to abusive arrangements and, if so, whether more or less restrictive conditions would be preferable. We are also soliciting public comments on other possible criteria that would be an acceptable basis for selecting recipients of the donated technology.

e. Value of Protected Technology

We are considering whether a larger cap on the value of the donated software would be appropriate. In the discussion of the pre-interoperability exception at section II.B.1 of this preamble, we noted various alternatives we are considering in connection with a limiting cap and outlined issues about which we are soliciting comments. We are considering similar issues, and are interested in similar comments, in connection with the appropriate amount of a cap for interoperable, certified technology donated under the post-interoperability exception.

We are interested in comments regarding the appropriate amount and methodology of a limiting cap. In addition to an aggregate dollar cap, we are considering two alternative approaches: (1) A cap that would be set at a percentage of the value of the donated technology to the physician (thus requiring the physician to share the costs); or (2) a cap set at the lower of a fixed dollar amount or a percentage of the value of the technology to the physician. We are soliciting public comment about this approach, including comments on how a cap under this exception would relate to a cap under the exceptions proposed at § 411.357(v) and § 411.357(w) and how the value of technology provided under the final exceptions would be aggregated. We are interested in public comments that address the retail and nonretail costs (that is, the costs of purchasing from manufacturers, distributors, or other nonretail sources) of obtaining electronic health records software and training services necessary to promote the widespread adoption of certified electronic health records systems. We are also interested in comments that address the degree to which physicians may already possess items or services that could be used for electronic health records. In addition, we are soliciting comments on whether and, if so, how to take into account physicians' access to any software that is publicly available either free or at a reduced price.

f. Other Conditions

Similar to the proposed electronic prescribing and pre-interoperability exceptions, the proposed post-interoperability exception would incorporate additional conditions as discussed in section II.A.3 above. These include a restriction at § 411.357(x)(3) on conditioning business on the receipt of electronic health records technology, a documentation requirement at § 411.357(x)(5), a requirement at § 411.357(x)(6) that the DHS entity not have actual knowledge or act in reckless disregard or deliberate ignorance of the fact that the physician possesses or has obtained duplicative items or services, an all-payors requirement at § 411.357(x)(7), and a requirement at § 411.357(x)(10) that the arrangement not violate the anti-kickback statute (section 1128B(b) of the Act) or any Federal or State law or regulation governing billing or claims submission.

III. Collection of Information Requirements

[If you choose to comment on issues in this section, please include the caption "Collection of Information Requirements" at the beginning of your comment.]

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to evaluate fairly whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the exceptions that are being proposed by this document. The electronic prescribing exception and the electronic health records exceptions would include an information collection requirement; that is, there would be a written, signed agreement for the provision to a physician of qualifying electronic technology.

The exception at § 411.357(v) would apply to the donation of non-monetary remuneration (consisting of items and services in the form of hardware, software, or information technology and training services) necessary and used solely to receive and transmit electronic prescription information. The exceptions at § 411.357(w) and § 411.357(x) would apply to non-monetary remuneration consisting of items and services (in the form of electronic health records software and directly related training services) that is necessary to receive, transmit, and maintain electronic health records.

These exceptions are limited to donations made by hospitals to physicians who are members of their medical staffs, by group practices to their physician members, and by PDP sponsors and MA organizations to physicians in their networks. Each of these arrangements must be in a writing that is signed by the parties and that identifies the items or services being provided and their value. In addition, the written arrangement must include a certification by the physician that the items and services to be provided are not technically or functionally equivalent to any items or services he or she already possesses or has already obtained.

The burden associated with the written agreement requirement is the time and effort necessary for documentation of the agreement between the parties, including signatures of the parties, and the signed certification by physicians.

We do not know how many hospitals, PDP sponsors, or MA organizations would use the exceptions that apply to qualifying electronic prescribing technology and electronic health records software and training services. However, as explained in section II.A.2 of this proposed rule, we expect that few group practices would use either exception because existing exceptions would likely apply to permit a group practice to provide its physician members with qualifying electronic prescribing items and services and electronic health records software and training services. Thus, few group practices would be affected by this exception and any related paperwork burdens.

In addition, because the donation of qualifying electronic prescribing technology and electronic health records software and training services is voluntary, we believe that some hospitals, PDP sponsors, and MA organizations will not avail themselves of this exception and will therefore not experience any paperwork burden.

Finally, we believe that, for those entities that choose to donate qualifying electronic prescribing technology or electronic health records software and training services to physicians, the paperwork burden will be limited by the terms of each exception. Each exception requires the donated items and services to be necessary and not duplicative of items and services the physician already possesses or has obtained.

We expect that every hospital, PDP sponsor, and MA organization that would choose to furnish qualifying

electronic prescribing technology or electronic health records software and training services to physicians would likely use a model agreement that lists or describes the electronic items and services to be donated. We expect that State or national organizations representing lawyers, physicians, group practices, hospitals, PDP sponsors, and MA organizations would create model agreements for their members. However, we also expect that attorneys for large providers (for example, academic medical centers) would create model agreements. We estimate that an entity that creates a model agreement would have to spend approximately 3 hours to draft two model agreements (one for each exception). We estimate that it would take a donor hospital 20 minutes to both tailor each model agreement for each physician and to sign each agreement. We estimate that each physician would also spend 20 minutes reading and signing each agreement and completing the necessary certification. We recognize that a physician and an entity would have to understand the differences between the items and services that an entity is offering and the items and services that the physician already possesses or has obtained.

As of April 2003, there were 586,411 physicians who provided Part B physician services to beneficiaries and (as of December 31, 2003) 6,057 hospitals that participated in Medicare. As of January 1, 2006, we expect that there would be at least two PDP sponsors serving each State and at least 270 MA plans. We assume that each physician is on the medical staff of two hospitals and would treat patients who are members of one PDP and two MA plans.

We do not believe that physicians would be willing now to participate in more than one type of electronic system because of the time necessary to learn to use each system efficiently. Because items and services must be necessary and used solely for electronic prescribing or electronic health records, we estimate that, on average, physicians would receive items and services from only one entity. (We recognize that two or more entities could each provide necessary items and services to a physician under an exception, but we do not expect that to occur in the near future.)

We are unable to estimate how many entities would provide these items or services to physicians annually. However, because the Federal government has established a goal of having most Americans' health information in electronic form by 2014, we estimate that one-ninth of all entities would begin the process of developing or using electronic prescribing and electronic health records each year.

Taking all of this into account, we expect that no more than 150 State or national organizations or lawyers for large hospital systems, PDP sponsors, or MA organizations would draft agreements for the 6,057 hospitals, 100 PDP sponsors, and 270 MA organizations. Because we estimate it would take 3 hours to prepare a model agreement, there may be at least two model agreements, and that 150 organizations would each prepare these agreements, it could take a maximum of 900 hours to prepare all model agreements (2 types of model agreements × 150 model agreements × 3 hours to prepare = 900 hours).

To calculate the maximum number of hours that reasonably would be required to complete the agreements, we assume that 10 percent of the 586,411 physicians would sign an agreement for electronic items and services. Therefore, we estimate that annually the donating entities may spend 19,547 hours in completing and signing the agreements (20 minutes × [.10 × 586,411 physicians] = 19,547 hours). In addition, we estimate that the cumulative burden on physicians would also be 19,547 hours.

An additional burden associated with the requirements for both exceptions would be that of maintaining documentation, and, if necessary, making it available to the Secretary upon request. We believe that the information we are requiring entities to maintain is information that they would already maintain in the ordinary course of business. Thus, any information the Secretary would need would already have been collected and maintained by the entities. Moreover, making information available to the Secretary should rarely be necessary, as the information is not collected routinely by the Secretary. Rather, the information would likely be collected only during the conduct of an administrative action, investigation, or audit involving a Federal governmental agency regarding specific individuals or entities. The paperwork burden associated with these types of reviews is exempt from the PRA under 5 CFR 1320.4(a).

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Jim Wickliffe, CMS–1303–P, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: CMS Desk Officer, Fax (202) 395–6974.

IV. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Statement" at the beginning of your comment.]

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibilities of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for final rules with economically significant effects (that is, a final rule that would have an annual effect on the economy of $100 million or more in any one year, or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). Because we believe that the economic impact of this proposed rule would not exceed $100 million annually, we have not prepared an RIA. However, we have analyzed alternatives and assessed benefits and costs in order to provide a basis for informed responses that will help us make final decisions.

This proposed rule would create new exceptions to the physician self-referral prohibition to allow certain entities to provide technology-related items and services to physicians for purposes of conducting electronic prescribing and maintaining electronic health records. The exceptions would protect donations of qualifying electronic prescribing technology and electronic health records software and directly related

training services made by a hospital to a physician member of its medical staff, a group practice to a physician member, and a PDP sponsor or MA organization to a prescribing physician, provided that certain conditions are satisfied. The exceptions should facilitate the adoption of electronic prescribing and electronic health records technology by filling a gap rather than creating the primary means by which physicians will adopt these technologies. In other words, we do not believe that donor entities will fund all of the health information technology used by physicians.

The proposed rule on electronic prescribing standards, which was published on February 4, 2005 (70 FR 6256), takes into consideration the expected cost for the hardware, software, training and information technology needed by prescribing practitioners, including physicians. In the preamble to that rule, we presented a Regulatory Impact Analysis covering the expected effects of electronic prescribing and the specific standards proposed. Our analysis showed the possibility of substantial and economically significant positive health effects on consumers and net positive economic effects on affected entities, such as physicians, pharmacies, and health plans. Our analysis focused on the likelihood that PDP sponsors and MA organizations would find it in their interest to pay some or all of the costs of qualifying electronic prescribing technology or electronic health records software and training services to encourage physician adoption.

This proposed rule would remove a potential obstacle to the provision of qualifying electronic prescribing technology and electronic health records software and directly related training services (for purposes of this Regulatory Impact Statement, herein referred to as "qualifying health information technology") by certain entities. Although this proposed rule applies to donations of qualified health information technology donations by hospitals, group practices, PDP sponsors, and MA organizations, we expect that many donor entities may not need to use these proposed exceptions, given the existing exceptions at § 411.352 and § 411.355(c).

Of particular importance, managed care services furnished by prepaid health plans or their contractors may fall within a previously codified exception (see § 411.355(c)). We believe that prepaid plans have substantial economic incentives to encourage the adoption of health information technology by contracting physicians, incentives that are larger than those for most other entities. We are interested in public comments on whether this existing exception is sufficiently broad to accommodate non-abusive arrangements and to foster the adoption of health information technology.

Regardless of whether donations would be allowed under existing exceptions or those that are included in this proposed rule, we encourage commenters to provide information on the costs that would likely be incurred by entities that would choose to furnish qualifying health information technology to physicians, as well as other related costs that would likely be incurred by both donors and physicians, such as costs incurred for changes in office procedures.

Our analysis under Executive Order 12866 of the expenditures that entities may choose to make under this proposed rule is restricted by potential effects of outside factors, such as technological progress and other market forces, future certification standards, and companion proposed anti-kickback statute safe harbors. Furthermore, both the costs and potential savings of electronic prescribing, electronic health records, computerized physician order entry, and billing and scheduling software vary to the extent to which each element operates as a stand-alone system or as part of an integrated system. We welcome comments that will help identify both the independent and synergistic effects of these variables.

As discussed in the February 4, 2005 E-Prescribing proposed rule at 70 FR 6268 through 6273, we expect that donors may experience net savings with electronic prescribing in place and patients would experience significant positive health effects. We have not repeated that analysis in this proposed rule.

There are numerous studies reporting that electronic health records in the ambulatory setting can result in a substantial improvement in clinical process. The effects of electronic health records include: (1) Reducing unnecessary or duplicative lab and radiology test ordering by 9 to 14 percent (Bates, D., *et al.*, "A randomized trial of a computer-based intervention to reduce utilization of redundant laboratory tests," *Am. J. Med.* 106(2), 144–50 (1999)); (Tierney, W., *et al.*, "The effect on test ordering of informing physicians of the charges for outpatient diagnostic tests," *N. Engl. J. Med.* 322(21): 1499–504 (1990)); (Tierney, W., et al., "Computerized display of past test results. Effect on outpatient testing," *Ann. Intern. Med.* 107(4): 569–74 (1987)); (2) lowering ancillary test charges by up to 8 percent (Tierney, W., et al., "Computer predictions of abnormal test results. Effects on outpatient testing," *JAMA* 259: 1194–8 (1988)); (3) reducing hospital admissions due to adverse drug events (ADEs), costing an average of $17,000 each, by 2 to 3 percent (Jha, A., *et al.*, "Identifying hospital admissions due to adverse drug events using a computer-based monitor," Pharmacoepidemiology and Drug Safety 10(2), 113–19 (2001)); and (4) reducing excess medication usage by 11 percent (Wang, S., *et al.*, "A cost-benefit analysis of electronic medical records in primary care," *Am. J. Med.* 114(5): 397–403 (2003)); (Teich, J., *et al.*, "Effects of computerized physician order entry on prescribing practices," *Arch. Intern. Med.* 160(18): 2741–7 (2000)). There is also evidence that electronic health records can reduce administrative inefficiency and paper handling. (Khoury, A., "Support of quality and business goals by an ambulatory automated medical record system in Kaiser Permanente of Ohio," *Eff. Clin.Pract.* 1(2): 73–82 (1998)). Most recently, a large study evaluating the impact of electronic health records on resource utilization in two States found that physician visits decreased by 9 percent 2 years after implementation.

These studies show a consistent pattern of clinical utilization reductions that have been reported to arise from electronic health records use in ambulatory settings. Although financial estimates were not performed in these studies, these utilization reductions could yield savings that accrue to Medicare because of its use of volume-based payments for ambulatory and inpatient care. Other studies have estimated that electronic health records in the ambulatory setting would save $78 billion to $112 billion annually, across all payors. This estimate includes up to $34 billion in annual savings from ambulatory computerized provider order entry (Johnston, D., *et al.*, "The Value of Computerized Provider Order Entry in Ambulatory Settings," Center for IT Leadership, Wellesley, MA (2003)) and up to $78 billion annually from interoperability of electronic health records (Walker, J., *et al.*, "The Value of Health Care Information Exchange and Interoperability," *Health Affairs, http://www.healthaffairs.org* (online exclusive) (2005)).

At the same time, the costs of electronic health records and other health information technology are very substantial. For example, one estimate of HIPAA compliance costs alone indicated that hospitals would need to spend $14 billion and health plans more than $5 billion. (Duncan, M., "August

2002 HIPAA Panel Results: Expected Costs/Benefits," Gartner (2002)). The range of cost estimates for electronic health records alone is wide. At one extreme, there are software systems under development that may be offered to physician settings free or at the cost of perhaps several thousand dollars, while others may cost $20,000 to $30,000. Extrapolated to the universe of health plans, hospitals, and physicians, total investment costs are likely to reach the billions of dollars.

It is unclear how rapidly adoption is now occurring. A recent study indicates "practices are encountering greater-than-expected barriers to adopting an [electronic health records] system, but the adoption rate continues to rise." (Gans, D., *et al.*, "Medical Groups' Adoption of Electronic Health Records and Information Systems," *Health Affairs*, September/October 2005). This study dealt only with group practices, and found greater difficulties in smaller groups. We can infer similar implementation difficulties for individual physician practices. For example, this study found the average initial cost of implementing an electronic health records system to be $33,000 per physician, with maintenance costs of $1,500 per physician per month, numbers which "would translate into about a 10 percent reduction in take-home pay each year for most primary care practices" if amortized over 5 years. (See Gans, D.). Another recent study reviews a broader range of providers and is equally pessimistic, arguing that the economic incentives of most stakeholders do not support health information technology investments. According to that article, "The greater marvel is that any physician, at his or her personal expense, would install a system that * * * saves money for every health care stakeholder except the adopting physician." (Kleinke, J.D., "Dot-Gov: Market Failure and the Creation of a National Health Information Technology System," *Health Affairs*, September/October 2005). This study is also more pessimistic than most about the business case for managed care plans to make health information technology investments, arguing that investments benefit not only the investing firm but also its competitors. Many other studies, discussed below, are more optimistic about economic returns to physicians. However, the disparate results illustrate the uncertainty that prevents us from making confident quantitative estimates of rates of adoption.

We assume that health information technology costs and benefits will be realized eventually. Even without government intervention, there is a lively market today, and as consensus standards evolve, that market will grow. The question as to the regulatory impact of the proposed rule is: Taking into account available policy instruments (notably the development of interoperability standards), to what extent would the use of these proposed physician self-referral exceptions accelerate adoption of electronic prescribing and electronic health records?

We do not have good baseline information. There are numerous estimates for the adoption of electronic prescribing by health plans, hospitals, physicians, and (for prescribing of drugs only) pharmacies. However, these estimates are clouded by uncertainty. For example, some studies count facsimile transmission of prescriptions as electronic prescribing. The majority of physician offices now use computers, and have high-speed Internet access, but less than one in five uses electronic health records. (Goldsmith, J., *et al.*, "Federal Health Information Policy: A Case of Arrested Development," Health Affairs, July/August 2003 (citing 17 percent adoption)). The Gans study found that about 12 percent of medical group practices have a fully implemented electronic health records system, and another 13 percent are in the process of implementation. For smaller group practices these percentages fall to 10 and 10, respectively. (See *Gans*, D., supra).

As discussed below, we estimate that 2 percent of physicians and 2 percent of all hospitals, group practices, MA organizations and PDP sponsors would be affected by these proposed exceptions each year. That is, only one in five of the potential donors of qualifying health information technology will utilize these exceptions. As explained in the February 4, 2005 E-Prescribing proposed rule (70 FR 6256), we believe that between 5 and 18 percent of prescribers, including physicians, are currently participating in some electronic prescribing. In addition, we explained that we believe that the proportion of prescribers using electronic prescribing would increase by about 10 percent annually over the next 5 years (70 FR 6256). We believe it is likely that about one in five of those prescribers would receive assistance under these proposed exceptions and another one in five would receive assistance under the exceptions already in place that apply to managed care plans and group practices.

These estimates depend primarily on the decisions of MA organizations and PDP sponsors as to whether to provide assistance to physicians for electronic prescribing and electronic health records and the decisions of group practices to implement these systems. We welcome information about the intentions of MA organizations and PDP sponsors to make donations of qualifying health information technology to physicians and the willingness of group practices to implement these systems.

Even if we were able to determine more precisely the number of physicians who are currently engaged in, and the number of physicians who will engage in, electronic prescribing, we cannot estimate with certainty the number of those physicians who would receive donated items and services. Some entities may be unwilling or unable to donate items or services, and some physicians already have the requisite items and services. In addition, we cannot estimate with certainty the cost of the qualifying health information technology that a physician would need from a donor. Part of this uncertainty is due to varying needs for the technology. For example, we expect that for face-to-face encounters with patients in hospital inpatient and outpatient departments, physicians would primarily use a hand-held device, for example, a personal digital assistant (PDA). Alternatively, physicians might find it easier to use one of the hospital's computers that increasingly are becoming located near patient rooms and throughout outpatient departments.

Although we do not know the cost of the electronic prescribing technology or of the electronic health records software that ultimately may be donated under these proposed exceptions, we describe below several studies of the costs and benefits of equipping doctors with such technology and software. The speed of adoption will depend on the extent to which prescribers realize net benefits (discussed extensively in our proposed rule on E-Prescribing) and on the extent to which our proposed exceptions (when made final) incrementally affect the costs and savings of the technology.

One study of data on the costs associated with an internally developed electronic medical record system for several internal medicine clinics at an integrated delivery system indicated that software development and maintenance would cost about $1,600 per provider per year. (See Wang, supra.) Use of commercially available software may cost twice as much. Financial benefits of electronic health records include not having to "pull" patient charts whenever a patient is to be seen and reduced transcription costs. In addition, electronic clinical decision

support has been shown to reduce ADEs and redundant radiology and clinical laboratory tests, and up-to-date information about alternative drugs reduces the use of expensive medications. Finally, when a medical record has complete and accurate information about services provided, billing errors are reduced, including failure to bill for a furnished service. The 5-year cost-benefit analysis of the internally developed electronic medical records system discussed above indicated savings per practitioner. (See Wang, supra.)

In another article, Dr. Kenneth Adler reported on his 86-physician, multi-specialty group practice's adoption of an electronic health records system beginning in 2003. (Adler, K., "Why It's Time to Purchase an Electronic Health Record System," *American Academy of Family Practitioners*, November/December 2004.) This group practice found that its electronic health records system improved communication, access to data, and documentation, which led to better clinical and service quality. This electronic health records system also saved the group practice money, and Dr. Adler expects that other group practices that adopt electronic health records systems will save money in addition to the other benefits listed above.

In a third study, the Central Utah Multi-Specialty Clinic, a 59-physician, nine-location group practice installed an electronic medical records system in April 2002. (Barlow, S., *et al.*, "The Economic Effect of Implementing an EMR in an Outpatient Clinical Setting," *J. of Healthcare Information Management*, 18(1): 46–51 (2004).) During its first year of operation, the group practice experienced direct reductions in spending and increases in revenue of more than $952,000 compared with the prior year, and anticipates savings of more than $8.2 million over the first 5 years of implementation. Once again, the savings are expected to result from reduced transcription costs, a reduced number of paper charts and related maintenance (including storage), and more appropriate coding because of appropriate documentation. (This study did not include information about the start-up costs of the electronic medical record system or the annual continuing costs. Therefore, caution should be used in drawing conclusions on any cost savings based on the results of this study.)

Finally, we note that the Center for Information Technology Leadership (CITL), in its 2003 report, "The Value of Computerized Provider Order Entry in Ambulatory Settings" [2] found that the average first year total cost of a basic electronic prescribing software system was approximately $3,000 per physician. This estimate was based on a survey of commercially available software.

We believe that donations allowed by this proposed rule would create no net costs to the economy. This rule would permit cost-shifting, allowing hospitals, PDP sponsors, and MA organizations to bear financial burdens that otherwise would have been borne by physicians and their patients. We anticipate that electronic prescribing and electronic health records technology ultimately should save donor entities and physicians the costs and other burdens associated with incorrect drug prescribing or dispensing, and result in reductions in the costs of medical transcribing and other paperwork. Similarly, obtaining accurate health records on a timely basis should benefit patients, physicians, hospitals, MA organizations, and PDP sponsors. The February 4, 2005 proposed rule on E-Prescribing standards (70 FR 6256) cites an estimate from the CITL that nationwide adoption of electronic prescribing would eliminate nearly 2.1 million ADEs per year. In turn, this reduction of ADEs would prevent nearly 1.3 million provider visits, more than 190,000 hospitalizations, and more than 136,000 life-threatening ADEs (70 FR 6268). We hope to see a significant reduction in ADEs each year as nationwide adoption occurs.

We estimate that 10 percent of the 586,411 physicians who provide services to Medicare beneficiaries would adopt electronic prescribing technology and electronic health records software and software training each year. We believe it is likely that health plans or hospitals would donate software or other items or services to no more than 20 percent of these physicians (or to fewer than 12,000 physicians) under our proposed exceptions and perhaps another 20 percent of these physicians (again fewer than 12,000 physicians) would receive donations under the existing exceptions that apply to managed care services and to group practices. We estimate that, at most, each physician would receive a total of $3,000 worth of donated items and services under the proposed exceptions. Therefore, assuming that 2 percent of physicians (one-fifth of all adopting physicians) would receive $3,000 worth of donated items and services in each of the two categories (electronic prescribing and electronic health records), annual donations approximate $36 million.

We expect that many physicians already own hand-held devices and will have begun to computerize their own medical practices. We also expect that hospitals, MA organizations, and PDP sponsors would see immediate financial and patient care benefits from the expanded use of electronic prescribing and electronic health records. We are particularly interested in comments concerning our estimated costs to hospitals for donating these items and services and the expected savings from reductions in medical transcription, redundant diagnostic testing, ADEs, and readmissions to hospitals. We anticipate that these savings will be greater than the costs incurred by entities using these exceptions, but we cannot quantify the savings at this time.

We note that an unexpected benefit recently occurred. The Atlantic Information Service reported in AIS E-Health on September 15, 2005 that patients from the Veterans Administration (VA) Hospital in New Orleans had been evacuated to other VA hospitals throughout the United States because of the effects of Hurricane Katrina. (*See (www.aishealth.com/EHealthBusiness/091505.html)*). Because the VA system makes extensive use of electronic prescribing and electronic health records, complete patient medical information was quickly made available to VA clinicians throughout the country.

The estimates above are highly sensitive to assumptions. The permitted value of donated items and services under the proposed exceptions might be half as much or twice as much as discussed above. The rate of adoption might be higher or lower than estimated. The proportion of physicians receiving remuneration could be lower or higher than estimated, depending on the willingness of hospitals, group practices, MA organizations, and PDP sponsors to subsidize investment in health information technology. We welcome comments on these variables and independent estimates as to the likely rates of adoption and subsidization.

At this time, there are mixed signals about the potential of electronic prescribing and electronic health records to reduce costs. For example, many estimates are based in part on the reduction of medical errors. However, one study has also shown that medical errors, and potentially costs, can increase if software is poorly designed

[2] Center for Information Technology (CITL, a research organization chartered in 2002) *http://www.citl.org*, Wellesley, MA (781–416–9200) 2003 report: "The Value of Computerized Provider Order Entry in Ambulatory Care."

or implemented (Koppel, *et al.*, 2005). Therefore, achieving reliable cost savings requires a more substantial transformation of care delivery that goes beyond simple use of any one kind of health information technology.

This rule likely would have an effect on the actual rate of adoption of electronic prescribing and electronic health records technology. Potential donors may be unlikely to provide assistance unless they believe it would accelerate the adoption of the technology. To the extent adoption is advanced, the costs and benefits of these technologies will be realized sooner. However, we are unable to provide any quantitative estimate of the likely effect of these proposed exceptions, taken alone, in the larger panorama of all health information technology investment decisions, market evolution, standards adoption, and use of existing physician self-referral exceptions. We welcome comment on whether information exists that would allow such estimates, and what they might be.

Finally, we believe it unlikely that annual effects would exceed $100 million in the 5-year timeframe that we generally use in our economic impact projections. If our estimate of the independent and direct effects of these new exceptions is accurate, and if the resulting acceleration in adoption is relatively small, this proposed rule would not be a major rule. However, we have completed all the elements of a Regulatory Impact Analysis because the uncertainty is so great.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess the anticipated costs and benefits of Federal mandates before issuing any rule that may result in the mandated expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars (a threshold adjusted annually for inflation and now approximately $120 million). This proposed rule would impose no mandates. Any actions taken under this rule would be voluntary. Furthermore, such actions are likely to result in cost savings, not net expenditures, and any expenditures would be undertaken by government-owned hospitals in their business capacity, without any necessary impact on State, local, or tribal governments, or their expenditure budgets, as such.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. For the reasons given above, this proposed rule, if finalized, would not have a substantial effect on State or local governments.

B. Impact on Small Businesses

The RFA requires agencies to analyze options for regulatory relief for small entities when a proposed rule may create a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and physicians are considered small entities, either by nonprofit status or by having revenues of less than $6 million a year. Almost all physicians in private practice (or all the practices of which they are members) are small entities because their annual revenues do not meet the Small Business Administration's $8.5 million threshold for small physician practices. Individuals and States are not included in the definition of a small entity, and this proposed rule would not have a financial impact on small governmental entities.

We have determined that this proposed rule would not have a significant impact on small entities because it does not increase regulatory burden or otherwise meet the RFA standard of "significant impact." While the aggregate impacts would be substantial, it is unlikely that near term effects on individual practitioners would be substantial as a proportion of revenues (for example, a $3,000 remuneration compared to typical practice revenues in the hundreds of thousands of dollars). We expect our proposed new exceptions ultimately to be highly beneficial to physicians, hospitals, and pharmacies (most in each category are small entities), as well as to affected entities and persons who are not "small entities" as defined in the RFA—PDP sponsors, MA organizations, and our beneficiaries. We welcome comment on these conclusions.

Nothing in this proposed rule meets any of the other thresholds requiring in-depth analysis. Although it affects a substantial number of small rural hospitals, there is no significant economic effect on small rural hospitals (more than 3 to 5 percent of total costs/revenues), it imposes no unfunded mandates or costs on either private or public entities, and it neither preempts State law nor otherwise has Federalism implications.

C. Conclusion

We have concluded that this proposed rule would not have a significant economic effect. Although the proposed exceptions may shift costs from physicians and patients to permissible donor entities and may lead to faster adoption of health information technology with substantial benefits, it is unclear whether, and we believe unlikely that, these effects would reach the threshold of $100 million annually in the near term, even though the long-term cumulative costs and benefits are likely to be many times this threshold. This rule would remove a potential obstacle to certain entities providing qualifying electronic prescribing technology and electronic health records software and directly related training services to physicians. The rule would permit cost shifting, allowing hospitals, MA organizations and PDP sponsors to bear financial burdens that otherwise would have been borne by physicians and their patients. We believe that this rule will provide substantial positive health effects on consumers and net positive economic effects on affected entities, including physicians, hospitals, and MA organizations.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 411

Kidney diseases, Medicare, Physician referral, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 411—[AMENDED]

1. The authority for part 411 is amended to read as follows:

Authority: Secs. 1102, 1871, and 1877(b)(4) and (5) of the Social Security Act (42 U.S.C. 1302, and 1395hh, and 1395nn(b)(4) and (5)).

Subpart J—Financial Relationships Between Physicians and Entities Furnishing Designated Health Services

2. Section 411.357 is amended by adding paragraphs (v), (w), and (x) to read as follows:

§ 411.357 Exceptions to the referral prohibition related to compensation exceptions.

* * * * *

(v) *Electronic prescribing items and services.* Non-monetary remuneration (consisting of items and services in the form of hardware, software, or information technology and training services) necessary and used solely to receive and transmit electronic prescription information, if all of the following conditions are met:

(1) The items and services are provided by a—

(i) Hospital to physicians who are members of its medical staff;

(ii) Group practice (as defined at § 411.352) to physicians who are members of the group practice (as defined at § 411.351); or

(iii) PDP sponsor or MA organization to prescribing physicians.

(2) The items and services are donated as part of, or are used to access, an electronic prescription drug program that meets the applicable standards under Medicare Part D at the time the items and services are furnished.

(3) The entity (or any person on the entity's behalf) must not take any actions to limit or restrict unnecessarily the use or compatibility of the items or services with other electronic prescription information items or services or electronic health information systems.

(4) For items or services that are of the type that can be used for any patient without regard to payor status, the donor may not restrict, or take any action to limit, the physician's right or ability to use the items or services for any patient.

(5) Neither the physician nor the physician's practice (including employees and staff members) makes the receipt of items or services a condition of doing business with the donor.

(6) Neither the eligibility of a physician for the items or services, nor the amount or nature of the items and services, is determined in a manner that takes into account the volume or value of referrals or other business generated between the parties.

(7) The arrangement is set forth in a written agreement that—

(i) Is signed by the parties;

(ii) Specifies the items or services being provided and the value of those items and services;

(iii) Covers all of the electronic prescribing items or services to be furnished by the entity; and

(iv) Contains a certification by the physician that the items and services are not technically or functionally equivalent to items and services he or she already possesses or has obtained.

(8) The entity did not have actual knowledge of, and did not act in reckless disregard or deliberate ignorance of, the fact that the physician possessed or had obtained items and services that were technically or functionally equivalent to those donated by the entity.

(w) *Electronic health records items and services that are not certified.* Non-monetary remuneration (consisting of items and services in the form of software or directly related training services) necessary and used solely to receive, transmit, and maintain electronic health records, if all of the following conditions are met:

(1) The items and services are provided by a—

(i) Hospital to physicians who are members of its medical staff;

(ii) Group practice (as defined at § 411.352) to physicians who are members of the group practice (as defined at § 411.351); or

(iii) PDP sponsor or MA organization to prescribing physicians.

(2) The entity (or any person on the entity's behalf) must not take any actions to limit or restrict unnecessarily the use or compatibility of the items or services with other electronic health records items or services or electronic health information systems.

(3) Neither the physician nor the physician's practice (including employees and staff members) makes the receipt of items or services, nor the amount or nature of the items or services, a condition of doing business with the donor.

(4) Neither the eligibility of a physician, nor the amount or nature of the items and services, is determined in a manner that takes into account the volume or value of referrals or other business generated between the parties.

(5) The arrangement is set forth in a written agreement that—

(i) Is signed by the parties;

(ii) Specifies the items or services being provided and the value of those items and services;

(iii) Covers all of the electronic health records items and services to be furnished by the entity to the physician; and

(iv) Contains a certification by the physician that the items and services are not technically or functionally equivalent to items and services he or she already possesses or has obtained.

(6) The entity did not have actual knowledge of, and did not act in reckless disregard or deliberate ignorance of, the fact that the physician possessed or had obtained items and services that were technically or functionally equivalent to those donated by the donor.

(7) For items or services that are of the type that can be used for any patient without regard to payor status, the donor may not restrict or take any action to limit the physician's right or ability to use the items or services for any patient.

(8) The items and services do not include any billing, scheduling, or other similar general office management or administration software or services, nor do the services include staffing of physician offices.

(9) The electronic health records technology contains electronic prescribing capability that complies with the electronic prescription drug program standards under Medicare Part D at the time the items and services are furnished.

(10) The arrangement does not violate the anti-kickback statute (section 1128B(b) of the Act) or any Federal or State law or regulation governing billing or claims submission.

(11) The donation was made before the effective date of paragraph (x) of this section.

(x) *Certified electronic health records items and services.* Non-monetary remuneration (consisting of items and services in the form of software or directly related training services) necessary to receive, transmit, and maintain electronic health records, if all of the following conditions are met:

(1) The items and services are provided by a—

(i) Hospital to physicians who are members of its medical staff;

(ii) Group practice (as defined at § 411.352) to physicians who are members of the group practice (as defined at § 411.351); or

(iii) PDP sponsor or MA organization to prescribing physicians.

(2) The technology is certified in accordance with criteria adopted by the Secretary that are in effect at the time of the donation.

(3) Neither the physician nor the physician's practice (including employees and staff members) makes the receipt of items or services, nor the amount or nature of the items or services, a condition of doing business with the donor.

(4) Neither the eligibility of a physician for the items or services, nor the amount or nature of the items and services, is determined in a manner that is directly related to the volume or value of referrals or other business generated between the parties. For the purposes of this paragraph, the determination is deemed not to be directly related to the

volume or value of referrals or other business generated between the parties if any one of the following conditions is met:

(i) The determination is based on the total number of prescriptions written by the recipient;

(ii) The determination is based on the size of the recipient's medical practice (for example, total patients, total patient encounters, or relative value units);

(iii) The determination is based on the total number of hours that the recipient practices medicine;

(iv) The determination is based on the recipient's overall use of automated technology in his or her medical practice (without specific reference to the use of technology in connection with referrals made to the donor);

(v) The determination is based on whether the physician is a member of the hospital's medical staff, if the donor is a hospital; or

(vi) The determination is made in any reasonable and verifiable manner that is not directly related to the volume or value of referrals or other business generated between the parties.

(5) The arrangement is set forth in a written agreement that—

(i) Is signed by the parties;

(ii) Specifies the items or services being provided and the value of those items and services;

(iii) Covers all of the electronic health records items and services to be furnished by the entity to the physician; and

(iv) Contains a certification by the physician that the items and services are not technically or functionally equivalent to items and services he or she already possesses or has obtained.

(6) The entity did not have actual knowledge of, and did not act in reckless disregard or deliberate ignorance of, the fact that the physician possessed or had obtained items and services that were technically or functionally equivalent to those donated by the donor.

(7) For items or services that are of the type that can be used for any patient without regard to payor status, the donor may not restrict or take any action to limit the physician's right or ability to use the items or services for any patient.

(8) The items and services do not include staffing of physician offices and are not used solely to conduct personal business or business unrelated to the physician's medical practice.

(9) The electronic health records technology contains electronic prescribing capability that complies with the electronic prescription drug program standards under Medicare Part D at the time the items and services are furnished.

(10) The arrangement does not violate the anti-kickback statute (section 1128B(b) of the Act), or any Federal or State law or regulation governing billing or claims submission.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 18, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 12, 2005.

Michael O. Leavitt,

Secretary.

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Part IV

Department of Labor

Delegation of Authority and Assignment of Responsibility for DOL Enterprise Communications Initiative; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 2–2005]

Delegation of Authority and Assignment of Responsibility for DOL Enterprise Communications Initiative

1. Purpose

To establish policy and assign responsibilities for the management of Department of Labor enterprise communications services, namely, Internet and intranet Web sites, telephone contact centers, electronic correspondence, translation services, and similar activities.

2. Authority and Relationship to Other Orders

a. Authority

This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. § 301; sections 5122–5127 of the Clinger-Cohen Act [40 U.S.C. 11312–17]; and the E-Government Act of 2002 (Pub. L. 107–347).

b. Relationship to Other Orders

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

(2) This Order replaces Secretary's Order 2–2003, Management of U.S. Department of Labor Web Sites.

(3) This Order amends Paragraph 4(a)(10) of Secretary's Order 2–2002, to the extent of any inconsistencies.

(4) This Order amends Secretary's Order 37–65, to assign responsibilities to the Office of Public Affairs for certain Web site functions.

3. Background

In order to better manage its dispersed public Web sites, intranets, communications centers, and translation services, the Department of Labor has established an Enterprise Communications Initiative (ECI). The prime purpose of the ECI is to make more effective use of DOL assets, eliminating wasteful duplication and reconciling inconsistencies across Department communications channels that may confuse or mislead the public whom we serve.

The ECI will set "best practice" standards and guidelines and, where feasible, establish centralized facilities—some hardware-based, some software-based, some procedural. No agency will be asked to incur a degradation of services, whether in functionality, reliability, performance, or cost. Conversely, agencies will be expected to participate in consolidated services that meet these conditions unless they can make a business case that such participation is contrary to statute or regulation, or otherwise would have a negative impact on the ability of the agency to fulfill its mission and its responsibilities to the U.S. taxpayers.

The ECI's rationalization of infrastructure will be predicated upon a careful review and recognition of the core needs of the Department and each of its associated agencies. The ECI recognizes that each individual agency has its own specific mission, responsibilities, and customer base. Consolidation efforts will be most applicable to agency functions that overlap or have a high degree of compatibility. Consolidation will not lead to a diminution of agency performance or a degradation of customer service.

The ECI will be designed to consolidate those services with clear benefit to participating agencies. The benefits will be measurable and demonstrable.

The ECI will be conducted in a spirit of collegial cooperation between the Department and its agencies. We will work together to build a better, more efficient, more effective communication infrastructure that will add value to the Department of Labor and all its agencies. We will share best practices, staff expertise, and proven solutions in order to provide the best possible service to our customers. We will establish consolidated services where they make sense, and respect the individual requirements of organizational units when inherent differences arise.

4. Scope Statements

a. Agencies will remain responsible for meeting their program needs. New agency-defined ECI information technology solutions will be subject to coordination with OPA.

b. OPA will establish ECI policies, standards, and procedures designed to provide an operational and technical framework that facilitates the agencies' ability to meet their program missions and functions while ensuring Departmental compliance with administrative and legislative requirements and mandates.

c. With the agencies, OPA will explore, promote and implement ECI common, cross-agency solutions with demonstrated Departmental economies and operational efficiencies that support program agency requirements.

d. OPA, in consultation with OCIO, will specify a common, consolidated hardware and software platform supporting Departmental Internet and intranet Web sites. OPA will consider the requirements of the agencies in the development of the common platform.

e. OPA will act as the primary technical resource available to agencies in the design, development and deployment of Web and call center solutions on a reimbursable basis. However, in the event that OPA's unable to meet agency-defined needs in a timely manner, the agencies and OPA will jointly determine other support and development alternatives including the use of contractor services, as long as DOL policies, standards, requirements are met.

5. Definitions

a. "*Contact Centers*" refers to the DOL National Contact Center (DOL–NCC) and all agency call centers that respond to routine customer inquiries (Tier I) from the public.

b. "*Departmental Web Site Information Technology Standards*" refers to the policies, processes, and procedures, defined by the Office of the Chief Information Officer (OCIO), to meet architectural, interoperability, and security requirements.

c. "*Enterprise Communications Media Channels.*" See "Enterprise Communications Services."

d. "*Enterprise Communications Services*" refers to Internet Web sites, intranet Web sites, contact centers, e-correspondence, and translation services.

e. "*E-Correspondence*" refers to activities related to managing and responding to inquiries received via e-mail from the public.

f. "*Foreign Language Translation Services*" refers to all activities related to managing the translation of any DOL products, regardless of format and end use.

g. "*Information Technology*" refers to any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency. It also refers to computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

h. "*Internet Web Sites*" refers to Departmental Web sites that are available to the general public, including, upon determination by the Deputy Secretary, "partnered sites," or

sites where DOL shares operations, management, and/or content with other government agencies or non-government entities.

i. "*Intranet Web Sites*" refers to Departmental Web sites that provide general access for communicating to DOL employees. Agency-specific intranet content that supports agency-specific program delivery internally are outside the scope of the ECI.

j. "*Legacy Web Application*" refers to existing Web applications that may be operating properly, but might need to be reengineered to function optimally or to be in compliance with the approved enterprise architecture.

k. "*New Web Site*" refers to a new presence on the public Web sites, a new presence among internal Web sites, or a Web site where DOL has shared responsibility. Examples include, but are not limited to, sites that represent a new program, statute, Departmental initiative, new type of information offered to the public, or new Web sites co-sponsored by the Department and another entity, public or private.

l. "*Public Access*" refers to the ability of the public or an audience to access Departmental information.

m. "*Resources*" refers to technical DOL staff, contract staff, budget, and technologies including hardware, software, licenses and maintenance contracts, and documentation associated with call centers, and/or Web activities.

n. "*Tier I*" refers to contact center staff who handle routine customer inquiries. Calls or e-mails requiring additional expertise not available in the call center are referred to technical or subject matter experts (Tier II).

o. "*Web Application*" refers to an application designed specifically to deliver and receive information via the Web (Internet and/or intranet) and its associated protocols (*e.g.* http, https, etc.) as the medium except as defined below (p).

p. "*Web-enabled Application*" refers to an application that is not developed for use as part of a Web site but uses Web-specific protocols (*e.g.*, http, https, etc.) out of convenience. Departmental Web-enabled applications that support agency-specific program delivery internally or to the public are outside the scope of the ECI.

6. Statement of Policy

Management of Internet and intranet resources, e-correspondence, language translation services, and the Tier I contact centers will be centralized, under processes consistent with section 3 and section 7, to allow the Department to leverage economies of scale, utilize best practices, and continue to improve upon the quality of service provided to the public. The following policies are established:

a. Legacy Web applications will continue to function "as is" and may be integrated over time into the enterprise communications architecture, using a phased approach on a schedule to be determined jointly by the agency and OPA;

b. Agencies will have the option to maintain or contract for technical staff, services, or equipment or utilize services by OPA to develop or support enterprise communications services within the scope of this Order, in a manner to be determined jointly by the agency and OPA; and

c. OPA and the agencies will jointly identify and agree on common, duplicative, cost-ineffective, or functionally-ineffective enterprise communications services and functionality and resources that may be more effectively and efficiently consolidated.

7. Delegation of Authority and Assignment of Responsibilities

a. *Deputy Secretary of Labor* is delegated authority and assigned responsibility to:

(1) Act as an arbitrator or appoint an arbitrator when an agency and the Office of Public Affairs reach an impasse in discussions about implementation of the Enterprise Communications Initiative.

b. *Assistant Secretary for Public Affairs* (ASPA) is delegated authority and assigned responsibility for implementation and management of the Enterprise Communications Initiative as outlined below:

(1) Appoint a DOL Director of Enterprise Communications Services to manage Departmental enterprise communications services;

(2) Manage all consolidated enterprise communications services, including contracts for technical development and services as described in 6.b.;

(3) Adhere to DOL information technology management policies, including enterprise architecture, security, capital planning, EVMS, certification and accreditation, and authority to operate requirements;

(4) In coordination with the agencies, develop a common look and feel, navigation, and branding for all appropriate DOL enterprise communications services and ensure all standards are implemented;

(5) Establish a charter and designate a Chair for the Enterprise Communications Services Advisory Council, comprised of senior-level representatives from agencies and designated policy-level representatives from OPA, OCIO, OASP and SOL, for the purpose of working to ensure the success of the ECI, and foster collaborative Department-wide use of resources, technologies, and knowledge. This committee will disband after ECI implementation begins, at the discretion of the ASPA, to be replaced by the Enterprise Communications Management Group;

(6) Establish a charter and designate a Chair for the Enterprise Communications Policy Committee that will write and implement policies relating to enterprise communications services, and ensure compliance with all federal legislative and administrative mandates. Membership will be comprised of representatives from agencies;

(7) Establish a charter and designate a Chair for the Contact Center Advisory Committee that will work to ensure the success of the ECI, and foster collaborative Department-wide use of resources, technologies, and knowledge. Membership will be comprised of representatives from agencies;

(8) Establish a charter and designate a Chair for the Enterprise Communications Management Group that will provide guidance to the Director of Enterprise Communications Services on enterprise communications activities. The Enterprise Communications Management Group will be established after the Enterprise Communications Services Advisory Council is disbanded. Membership will be comprised of senior level representatives from agencies and designated policy-level representatives from OPA, OCIO, OASP, and SOL;

(9) Subject to other required DOL clearance processes, coordinate the timely review and approval process of all new Internet and intranet Web sites with the affected agency, SOL, OASP and, where appropriate, the Deputy Secretary;

(10) In cooperation with the agencies, develop and establish the Departmental content clearance process. OPA will have responsibility to manage and oversee the established process, including:

(a) Appropriate and timely approval or disapproval of content for policy consistency, prior to release via Departmental enterprise communications media channels; and

(b) Appropriate coordination with SOL to ensure compliance with applicable laws, regulations, and administrative mandates, including the Privacy Act, Federal Records Act, Section 508 of the Rehabilitation Act, and the E-Government Act.

(11) Receive content updates from designated agency content managers, timely review submitted information, and publish new and updated content. This will be implemented using a phased approach by developing SLAs, to be determined jointly by the agency and OPA. OPA will consult with the agencies in the evaluation and selection of software to be used for DOL-wide content management;

(12) Coordinate enterprise communications content and services with the agencies to ensure content is published in a timely manner, and in alignment with the Department's mission and Secretarial goals, and meets established SLAs;

(13) Develop appropriate formal agreements as needed with each agency to establish agency and OPA roles and responsibilities;

(14) Conduct research and development activities related to enterprise communications services in coordination with the agencies, and select promising candidates for further development;

(15) Participate in interagency and federal-wide groups, committees, and task forces related to enterprise communications services, and coordinate all DOL responses, deliverables, and activities related to such groups;

(16) Collaborate with the agencies and use best practices, usability testing, and the latest research findings to establish policies, standards, processes and procedures to ensure that DOL enterprise communications services are managed in accordance with the Privacy Act, Federal Records Act, section 508 of the Rehabilitation Act, the E-Government Act, and other applicable legislative and administrative mandates and guidance to protect the legal rights of, and minimize the legal risks to, the Department; and

(17) Develop Internet and intranet Web applications across all enterprise communications media channels according to agreed upon agency requirements, except when agency control over the development of such applications is established by law, is outside the scope of this order, or is authorized jointly by the agency and OPA upon agency request.

c. *The Assistant Secretary for Policy* (ASP) is delegated authority and assigned responsibility to:

(1) Conduct timely content reviews of proposed new Web sites for the purpose of approving or disapproving the proposed sites in coordination with the affected agency, OPA, SOL and, where appropriate, the Deputy Secretary; and

(2) Participate in the Enterprise Communications Services Advisory Council and the Enterprise Communications Management Group.

d. *The Chief Information Officer* (CIO) is delegated authority and assigned responsibility to:

(1) In consultation with OPA and SOL as appropriate, provide guidance and support, consistent with Secretary's Order 3–2003, for all information technology aspects of DOL Internet Web sites and intranet Web sites pursuant to the Clinger-Cohen Act, E-Government Act, Paperwork Reduction Act, section 508 of the Rehabilitation Act, Federal Information Security Management Act (FISMA), and other applicable statutory and administrative mandates;

(2) In conjunction with OPA, and according to policy, process approved domain name requests; and

(3) Participate in the Enterprise Communications Services Advisory Council and the Enterprise Communications Management Group.

e. *The Assistant Secretary for Administration and Management* (ASAM) is delegated authority and assigned responsibility to:

(1) Ensure, through the Department's budget review process, that the agencies and OPA have appropriate plans and budgetary commitment to support the continuing development, implementation, operation, and expansion of DOL enterprise communications services;

(2) Support OPA in consolidation and realignment of agency resources (as defined in Section 5, Definitions) where appropriate, in support of the ECI; and

(3) Provide operational and maintenance support to OPA and applicable agencies for the hardware and operating systems used to run Internet information services, Internet Web sites, and LaborNet, including network connectivity and backups.

f. *The Solicitor of Labor* (SOL) is delegated authority and assigned responsibility to:

(1) Provide legal advice and services to OPA and all other DOL agencies on all matters arising in the administration of this Order;

(2) Conduct timely content reviews of proposed new Web sites, for the purpose of approving or disapproving the proposed sites in coordination with the affected agency, OPA, OASP and, where appropriate, the Deputy Secretary; and

(3) Participate in the Enterprise Communications Services Advisory Council and the Enterprise Communications Management Group.

g. *DOL Agency Heads* are delegated authority and assigned responsibility for developing, implementing, improving, and expanding their respective agency enterprise communications services in accordance with this Order and DOL policy and standards. These responsibilities include the following:

(1) Designate an Agency Content Manager(s) at the production level to serve as the point of contact with OPA staff for any enterprise communications related issues;

(2) Nominate appropriate agency staff to serve as members of advisory committees. OPA will define appropriate staff levels for each committee;

(3) Define, fund, maintain, and support enterprise communications solutions designed to meet their program needs in coordination with OPA and departmental requirements;

(4) If the agency maintains responsibility for their enterprise communications services, ensure that all information published via enterprise communications services, all e-correspondence coming into the Web sites, as well as responses, and all records of business transacted in whole or in part via DOL's enterprise communications services are managed in accordance with the Federal Records Act, Privacy Act, and other applicable legislative and administrative mandates and guidance;

(5) Seek OPA's approval for all proposed new Internet and intranet Web sites, which will be evaluated in accordance with the clearance process and DOL policies and standards;

(6) Conduct quarterly certifications of all agency Web and contact center content, to ensure the accuracy, timeliness, and authority of information disseminated via enterprise communications channels;

(7) Develop all agency-specific content for enterprise communications media channels;

(8) Establish and enforce an agency content review and clearance policy and process;

(9) Assign appropriate ECI contact(s) to assist OPA with implementation of the ECI;

(10) Ensure that DOL policies, standards, and procedures are implemented, as applicable;

(11) Coordinate with OPA to develop new products to further the mission of the agency and the Department; and

(12) Designate an agency contact responsible for coordination of foreign language translation services.

8. Effective Date

This Order is effective immediately.

9. Reservation of Authority

a. The submission of reports and recommendations to the President and Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary of Labor.

b. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90 (January 31, 1990).

c. The Secretary retains all authorities delegated herein.

10. Redelegations and Transfers of Authority

a. All of the authorities delegated herein may be re-delegated with the knowledge and approval of all responsible parties.

b. The Assistant Secretary for Public Affairs may transfer authorities set forth in paragraph 6.b. to other agency heads, as appropriate.

11. Grandfather Clause

a. Existing Departmental enterprise communications services shall continue in effect until agencies are transitioned into ECI.

Dated: September 30, 2005.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 05–20328 Filed 10–7–05; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Tuesday,
October 11, 2005

Part V

The President

Proclamation 7940—German-American Day, 2005

Federal Register
Vol. 70, No. 195
Tuesday, October 11, 2005

Presidential Documents

Title 3—

The President

Proclamation 7940 of October 6, 2005

German-American Day, 2005

By the President of the United States of America

A Proclamation

German Americans have played an important role in establishing America as a land where liberty is protected for all of its citizens. Each year on German-American Day, we celebrate the contributions the millions of Americans of German descent have made to our great Nation.

Among the early German immigrants, many saw America as a beacon of religious freedom and an opportunity for an improved standard of living. German immigrants helped pioneer the first American colony at Jamestown. Frederick Augustus Muhlenberg served as the first Speaker of the House of Representatives; in this role, he certified the final version of the Bill of Rights.

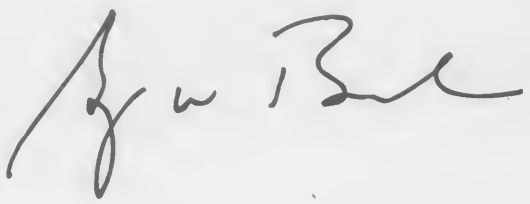
Throughout our country's history, men and women of German descent have worn the uniform of the United States military to defend our country's freedom. Among these were Admiral Chester Nimitz, Commander in Chief of the United States Pacific Fleet during World War II, and General Dwight D. Eisenhower, who went on to become one of America's Presidents of German ancestry. Today, German-American troops continue to serve proudly in our Nation's Armed Forces.

German Americans have enriched many other aspects of American life. Albert Einstein's advancements in the field of physics help define our understanding of the universe. Theodor Seuss Geisel, more commonly known as Dr. Seuss, has captivated the imaginations of children for generations with his timeless classics. Baseball great Lou Gehrig's courage on and off the field continues to inspire the American spirit more than 60 years after his death.

On German-American Day, we also honor the important friendship between the United States and Germany. Our nations share beliefs in human rights and dignity, and on this day, I join all Americans in celebrating the bonds that tie our two nations and in reaffirming the importance of our continuing friendship.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6, 2005, as German-American Day. I encourage all Americans to celebrate the many contributions German Americans have made to our Nation's liberty and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20485
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H.R. 2385/P.L. 109–79

To extend by 10 years the authority of the Secretary of Commerce to conduct the quarterly financial report program. (Sept. 30, 2005; 119 Stat. 2044)

H.R. 3200/P.L. 109–80

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H.R. 3784/P.L. 109–81

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H.R. 3864/P.L. 109–82

Assistance for Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005 (Sept. 30, 2005; 119 Stat. 2050)

S. 1752/P.L. 109–83

To amend the United States Grain Standards Act to reauthorize that Act. (Sept. 30, 2005; 119 Stat. 2053)

H.R. 3667/P.L. 109–84

To designate the facility of the United States Postal Service located at 200 South Barrington Street in Los Angeles, California, as the "Karl Malden Station". (Oct. 4, 2005; 119 Stat. 2054)

H.R. 3767/P.L. 109–85

To designate the facility of the United States Postal Service located at 2600 Oak Street in St. Charles, Illinois, as the "Jacob L. Frazier Post Office Building". (Oct. 4, 2005; 119 Stat. 2055)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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500–End	(869–056–00061–8)	63.00	Apr. 1, 2005
21 Parts:			
1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–056–00069–3)	58.00	Apr. 1, 2005
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–056–00071–5)	63.00	Apr. 1, 2005
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
*0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–052–00113–9)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
*86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
*100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
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8		4.50	[3]July 1, 1984
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18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
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*102–200	(869–056–00171–1)	56.00	July 1, 2005
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42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
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140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
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7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

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