Federal Register

2–3–05 Thursday
Vol. 70 No. 22 Feb. 3, 2005

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

2–3–05 Thursday
Vol. 70 No. 22 Feb. 3, 2005

Pages 5543–5914

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

What's NEW!

Regulations.gov, the award-winning Federal eRulemaking Portal

Regulations.gov is the one-stop U.S. Government web site that makes it easy to participate in the regulatory process.

Try this fast and reliable resource to find all rules published in the *Federal Register* that are currently open for public comment. Submit comments to agencies by filling out a simple web form, or use available e-mail addresses and web sites.

The Regulations.gov e-democracy initiative is brought to you by NARA, GPO, EPA and their eRulemaking partners.

Visit the web site at: **http://www.regulations.gov**

Contents

Federal Register

Vol. 70, No. 22

Thursday, February 3, 2005

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 70, No. 22
Thursday, February 3, 2005

DEPARTMENT OF HEALTH AND HUMAN SERVICES

5 CFR Parts 5501 and 5502

RIN 3209–AA15

Supplemental Standards of Ethical Conduct and Financial Disclosure Requirements for Employees of the Department of Health and Human Services

AGENCY: Department of Health and Human Services (HHS).

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Health and Human Services, with the concurrence of the Office of Government Ethics (OGE), is amending the HHS regulation that supplements the OGE Standards of Ethical Conduct. This interim final rule specifies additional procedural and substantive requirements that are necessary to address ethical issues at the National Institutes of Health (NIH) and updates nomenclature, definitions, and procedures applicable to other components of the Department. The rule: Revises the definition of a significantly regulated organization for the Food and Drug Administration (FDA); Updates the organization titles of designated separate agencies; Amends the gift exception for native artwork and craft items received from Indian tribes or Alaska Native organizations; Aligns the FDA prohibited holdings limit with the *de minimis* holdings exemption in OGE regulations; Revises prior approval procedures for outside activities; and, subject to certain exceptions: Prohibits NIH employees from engaging in certain outside activities with supported research institutions, health care providers or insurers, health-related trade or professional associations, and biotechnology, pharmaceutical, medical device, and other companies substantially affected by the programs, policies, or operations of the NIH; Bars NIH employees who file a public or confidential financial disclosure report from holding financial interests in substantially affected organizations; Subjects NIH non-filer employees to a monetary cap on holdings in such organizations; Specifies for NIH employees prior approval procedures for and limitations on the receipt of certain awards from outside sources; and Imposes a one-year disqualification period during which NIH employees are precluded from official actions involving an award donor. In addition, the Department is adding a new supplemental part to expand financial disclosure reporting requirements for certain outside activities and to ensure that prohibited financial interests are identified.

DATES: This interim rule is effective February 3, 2005. Comments received by April 4, 2005, will be considered prior to issuance of a final rule.

ADDRESSES: Send comments in writing to the Office of the General Counsel, Ethics Division, Department of Health and Human Services, Room 700–E, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, Attention: Linda L. Conte. Comments also may be sent electronically to the following e-mail address: *ethics@hhs.gov*. For e-mail messages, the subject line should include the following reference: "Comments on Interim Final HHS Supplemental Ethics Rule."

FOR FURTHER INFORMATION CONTACT: Edgar M. Swindell, Associate General Counsel, Office of the General Counsel, Ethics Division, Department of Health and Human Services, telephone (202) 690–7258, fax (202) 205–9752.

SUPPLEMENTARY INFORMATION:

I. Background

The Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, establish uniform rules of ethical conduct applicable to all executive branch personnel. Pursuant to 5 CFR 2635.105, an agency may, with the approval of the Office of Government Ethics, supplement those standards with additional rules that the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of part 2635. On July 30, 1996, with the concurrence and co-signature of the OGE Director, HHS published at 61 FR 39755 a final rule establishing supplemental standards of ethical conduct for its employees. This interim final rule amends that final rule codified at 5 CFR part 5501.

In addition to several changes with respect to rules applicable to employees of the National Institutes of Health related to outside activities, financial holdings, and awards, this interim final rule makes several changes to the HHS Supplemental Standards of Ethical Conduct applicable to all Department employees. These changes are based on the experience that has been garnered by the Department in implementing the regulation since it was issued in 1996. The interim final rule establishes more specific requirements with respect to requests for approval of outside activities and imposes an annual reauthorization process.

Although immediately effective, this is as an interim rule. HHS intends to evaluate certain provisions in the rule, particularly on outside activities and financial holdings, within the next year. During this time. HHS also will: (1) Complete a review of existing outside activities that is presently ongoing; (2) evaluate possible effects on hiring and retention that may result from the imposition of outside activity and financial holdings prohibitions; and (3) develop a comprehensive oversight system to address concerns raised about the NIH ethics program.

In addition, the Executive Branch Financial Disclosure Regulation, 5 CFR part 2634, specifies uniform rules governing the public and confidential financial disclosure systems established under the Ethics in Government Act. Pursuant to 5 CFR 2634.103, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental financial disclosure regulations that are necessary to address special or unique circumstances. This interim final rule amends chapter XLV of title 5 by adding new part 5502 to provide for an annual reporting by all employees of financial and other information concerning outside activities and a supplemental disclosure by all FDA and NIH employees with respect to prohibited financial interests.

Post-promulgation comments on this interim final rule are requested. Those comments and experience under the

interim rule will inform the development of a final permanent rule, in consultation with OGE.

II. Analysis of the Amendments

A. Supplemental Standards of Ethical Conduct

Section 5501.101 General

The definition of a "significantly regulated organization" found at § 5501.101(c)(2) is amended to make clear that for entities that do not have a record of sales of FDA-regulated products, and which have not yet commenced operations in a field regulated by FDA, an entity will nonetheless be deemed significantly regulated if its research, development, or other business activities are reasonably expected to result in the development of products that are regulated by FDA.

Since the issuance of the HHS Supplement, the existing language of the regulation has suggested to some employees that until a company submits an investigational new drug application and begins conducting clinical trials, the company is not significantly regulated (assuming there is no record of prior sales of FDA-regulated products). Because FDA does not have a generalized authority to regulate the "field" of scientific research, some employees have interpreted the existing regulation as permitting employment with a company that is thus far only conducting preliminary research, even when it is reasonable to conclude that the research is conducted with the aim of developing FDA-regulated products.

Accordingly, this amendment ensures that newly-formed business entities that do not yet have products that are approved for sale, and which have not yet undertaken operations that bring them within FDA's regulatory jurisdiction, will be understood to fall within the definition of significantly regulated if their research, development, or other business activities are reasonably expected to result in the development of products that are regulated by FDA. It also makes clear that where a company's operations are regulated by FDA, to fall within the definition, the operations need not be entirely in areas regulated by FDA as long as they are primarily in such areas.

Section 5501.102 Designation of HHS Components as Separate Agencies

The changes to this section reflect the name change of two HHS agencies, the Agency for Healthcare Research and Quality, previously known as the Agency for Health Care Policy and Research, and the Centers for Medicare and Medicaid Services, previously known as the Health Care Financing Administration. The Office of Consumer Affairs was abolished in 1998 and is deleted from the list. In addition, the amendment specifies that the designation of separate agencies will apply in defining a prohibited source for purposes of the new awards rule in § 5501.111 for NIH employees.

Section 5501.103 Gifts From Federally Recognized Indian tribes or Alaska Native Villages or Regional or Village Corporations

The change to this section clarifies that items representative of traditional native culture from federally recognized Indian tribes or Alaska Native villages, or regional or village corporations, fall within the previously established rule permitting HHS employees to accept gifts of native artwork and crafts, provided that the aggregate market value of individual gifts received from any one tribe or village does not exceed $200 per year and other criteria are satisfied. The amendment permits gifts that, while representative of traditional native culture, were not necessarily produced or manufactured by the donor entity.

Section 5501.104 Prohibited Financial Interests Applicable to Employees of the Food and Drug Administration

The section heading and text have been revised to delete redundant references to the "FDA Office of the Chief Counsel." Section 5501.102(b)(1) already specifies that any section in part 5501 that is made applicable to employees of an identified component that is designated as a separate agency is applicable, in addition to employees actually working within a component, to employees in a division or region of the Office of the General Counsel (OGC) that principally advises or represents that component.

Section 5501.104(a) prohibits FDA employees from holding financial interests in significantly regulated organizations, subject to certain exceptions in § 5501.104(b). The change in paragraph (b)(1) broadens the scope of the exception, which previously covered only pension interests, such as those arising from participation in defined benefit or defined contribution plans. Experience since the issuance of the supplemental regulation indicates that many incoming employees hold financial interests which, like a pension interest, were acquired as a form of compensation from a significantly regulated organization, but which do not qualify as a pension. For example, a recent report by the National Academy of Sciences found that stock and stock options are common employee benefits in small, private technology firms in the fields of engineering and health care, and the report recommended against forced divestiture of such employee benefits for scientists entering public service, as such requirements may unreasonably hamper the recruitment of talented and experienced scientific personnel. National Academy of Sciences, *Science and Technology in the National Interest: Ensuring the Best Presidential and Federal Advisory Committee Science and Technology Appointments* 199–201 (2004). Therefore, the exception has been amended to include not only pensions but other employee benefits.

This exception is not intended to permit retention of financial interests merely because the interest was purchased by an employee contemporaneously with employment in private industry through a broker, financial advisor, or other source not acting as part of the private employer's compensation system.

In addition, like all the exceptions in this section, the provision merely permits retention of a financial interest notwithstanding the prohibited financial holdings provision of this section. The recusal requirements of 18 U.S.C. 208 apply to all financial interests, including those covered by the exceptions in this section. (References to § 208 within this regulation are descriptive and not intended to interpret or expand upon the text of the statute.) Moreover, all financial interests are subject to directed divestiture pursuant to 5 CFR 2635.403(b), when there has been a determination by the agency that holding the particular financial interest, or a class of financial interests, will require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his office would be materially impaired, or will adversely affect the efficient accomplishment of the agency's mission because another employee cannot readily be assigned to perform the work from which the employee is recused by reason of the financial interest.

Section 5501.104(b)(2) contains an exception to the prohibited holdings rule for employees who are not required to file a public or confidential financial disclosure report. Non-filers have been permitted to have a financial interest not exceeding $5,000 in significantly regulated organizations. The amendment raises the amount of the allowable holding to $15,000. The change parallels the increase from

$5,000 to $15,000 in the OGE regulatory exemption for matters involving parties, found at 5 CFR 2640.202(a), that occurred after the original issuance of the HHS supplemental provision. The OGE exemption allows an employee to participate in any particular matter involving specific parties in which the disqualifying financial interest does not exceed $15,000 in publicly traded securities or long-term Federal Government or municipal securities. Because the allowable holding amount in the HHS Supplement corresponded to the OGE *de minimis* amount, an increase in the latter justifies an increase in the allowable holding limit in the HHS Supplement. Further, the section will track any future change in the OGE *de minimis* amount.

Although the dollar amounts are identical, the two provisions substantively are not coextensive. Not all financial interests that may be covered by the FDA exception will be covered by the OGE regulatory exemption. For example, the FDA exception permits a non-filer to hold a financial interest in a non-publicly traded company (assuming all the other criteria in the section are also satisfied), but the OGE regulatory exemption only applies when the corporate securities are publicly traded. Therefore, the financial interest may still be problematic under 18 U.S.C. 208 and require a recusal, a divestiture, or an individual waiver, even though § 5501.104(b)(2) excepts the holding from the FDA automatic divestiture requirement.

In applying the allowable holding amount, the existing section specifies that the asset value is to be measured "at the time of acquisition." The amendment to this section now defines that phrase. This change is intended to obviate the possibility of unintended situations which, depending on the interpretation of that phrase, could lead to treatment for some employees that is inconsistent with treatment of similarly-situated employees, and lead to results that are inconsistent with the intent of the provision. Specifically, there could be scenarios in which an employee who recently joined the agency, and who had acquired an asset in the distant past, could be permitted to retain an asset, now valued well over $15,000, because it had been valued under $15,000 "at the time of acquisition," while other new employees who acquired an asset more recently, but at a level above $15,000, are required to divest a much lower valued financial interest in the same or other significantly regulated organizations. Such inconsistent results in the implementation of the regulation could undermine the very purpose of the provision (*i.e.*, that only *de minimis* holdings should be permitted) and undermine employee confidence that the regulation is being applied fairly and uniformly. Accordingly, this change is intended to make clear that for assets that were acquired prior to joining FDA, the "time of acquisition" will be deemed to be the date of the employee's entrance on duty at the agency. The change will prevent unfair and unwarranted inconsistencies in how the prohibited holding regulation is applied and will prevent situations in which employees are treated disparately, as a consequence of investment decisions made prior to their entrance on duty.

New § 5501.104(c) provides that, for purposes of determining the divestiture period specified in 5 CFR 2635.403(d), an employee is not considered to have been directed to divest a financial interest prohibited under paragraph (a) of this section until the due date for disclosure of such interests. For new entrant employees, this disclosure would be submitted on either a public or confidential financial disclosure report or the supplemental report required by new § 5502.106(c), depending upon their filing status. For incumbent employees, the due date of the report required by § 5502.106(c) would be determinative. This rule allows the agency to analyze an employee's holdings and make a determination as to whether a particular financial interest is covered by the prohibition before the requirement to divest becomes applicable. The text codifies existing agency practice and parallels a similar provision in the Department of Housing and Urban Development supplemental ethics regulations at 5 CFR 7501.104(c) which prescribes a divestiture period of 90 days from the date a prohibited financial interest is reported.

Section 5501.106 Outside Employment and Other Outside Activities

The paragraph heading and introductory text of paragraph (c)(3) have been revised to delete redundant references to the FDA "Office of the Chief Counsel." Section 5501.102(b)(1) already specifies that any section in part 5501 that is made applicable to employees of an identified component that is designated as a separate agency is applicable, in addition to employees actually working within a component, to employees in a division or region of the Office of the General Counsel that principally advises or represents that component.

The amended paragraph (c)(4) provides that the attorneys in the Office of the Counsel to the Inspector General are subject to the same outside activities restrictions as those in the Office of the General Counsel.

The amended paragraph (d)(2)(i) adds employees of the NIH to the prior approval requirement, currently applicable to employees of the FDA, for any outside employment, whether or not for compensation, or any self-employed business activity.

The amended paragraph (d)(3) requires an employee's supervisor to review the request for approval of an outside activity and provide a statement addressing the extent to which the employee's duties are related to the proposed outside activity. This information shall then be forwarded to an agency designee to make a final determination with respect to the request. The amendment also specifies that the following information be included with the request: the employee's step within a grade, appointment type, and financial disclosure filing status; a description of how the employee's official duties will affect the interests of the outside employer; whether stock or other remuneration in cash or in-kind will be received in connection with the activity; the amount of compensation to be received in connection with the activity; the amount and date of compensation received, or due for services performed, within the prior six years; a syllabus, outline, summary, synopsis, draft, or similar description of content and subject matter if the activity involves teaching, speaking, or writing; and other information as determined by the designated agency ethics official, or the HHS component with the concurrence of the designated agency ethics official, to be necessary or appropriate to evaluate whether the request is prohibited by statute or regulation. Should other types of information be routinely required of all employees, general notice of such requirements will be disseminated through instructions or manual issuances and revisions to the forms that are utilized for these purposes.

The amendment to paragraph (d)(4) clarifies that a request for approval of outside employment or other outside activity may not be granted unless there is an affirmative determination that the employment or other activity is not expected to involve conduct prohibited by statute or regulation.

Existing paragraph (d)(5) has been renumbered as paragraph (d)(6). New paragraph (d)(5) specifies that approval of an outside activity is effective for one year only. Employees must renew their request for approval annually if they

desire to continue any long term outside activity. In addition, employees must submit a revised request for approval if they change positions within the agency or if a significant change occurs in the nature of the outside activity or in the scope of the employees' duties.

Paragraph (e) incorporates a waiver provision to be used where. under the particular circumstances, application of the prohibited outside activity rules for FDA, OGC, or NIH employees is not necessary to ensure confidence in the impartiality and objectivity with which agency programs are administered. The waiver must not be inconsistent with part 2635 of this title or otherwise prohibited by law. This standard parallels the waiver provision at 5 CFR 3101.108(g) in the Department of the Treasury supplemental ethics regulation that imposes outside activity prohibitions applicable to employees of the Office of the Comptroller of the Currency. This provision could be applied to provide some relief, for example, where the prohibition unduly causes personal or family hardship or, prohibits an employee from completing a professional obligation entered into prior to Government service, or restricts the Department from securing necessary and uniquely specialized services.

Section 5501.109 Prohibited Outside Activities Applicable to Employees of the National Institutes of Health

Prior to the publication of this interim final rule, the criteria for approving or disapproving requests for approval of outside activities of NIH employees were set forth in the OGE regulation at 5 CFR part 2635, subpart H, and the Supplemental Standards of Ethical Conduct for Employees of HHS at 5 CFR 5501.106. Both the OGE rules and the HHS provisions in § 5501.106 remain in effect for all NIH employees. This interim final rule imposes additional, more stringent requirements, similar to those in 5 CFR 5501.106(c)(3) for employees of the FDA.

Outside activities with entities substantially affected by NIH programs, policies, or operations must be further restricted in order to avoid the potential for real or apparent conflicts of interest that may threaten the integrity of the critically important research conducted and sponsored by the NIH. This assessment is informed by recommendations of the Advisory Committee to the NIH Director that were presented in the June 22, 2004, Report of the NIH Blue Ribbon Panel on Conflict of Interest Policies (Blue Ribbon Panel Report), available at *http://www.nih.gov/about/ethics_COI_panelreport.htm*, but is predicated upon a consideration of various outside activities of NIH employees that have been subject to inquiry and the desire to advance sound public policy. Many of the panel recommendations and related issues were highlighted and discussed at Congressional hearings on outside consulting arrangements by NIH employees. Panel recommendations to liberalize certain current restrictions were not adopted in this rule. Additional restrictions are necessary because NIH operations increasingly require significant interaction with pharmaceutical, biotechnological, biostatistical, and medical device companies (referred to within the regulation as "substantially affected organizations") and utilization of their products; the size and scope of NIH funding of biomedical and behavioral research, research training, and related activities have grown substantially; and NIH research findings are broad in range and influence within the health care sector. Moreover, in light of recent Congressional oversight and media reports, HHS has determined that the existing rules governing outside activities have not prevented reasonable public questioning of the integrity of NIH employees and the impartiality and objectivity with which agency programs are administered.

Through its approximately 17,500 full-time equivalent employees, NIH conducts biomedical and behavioral research, research training and related activities in its intramural program, and its extramural program funds those activities at universities, medical centers, research institutes and other nonprofit and for-profit organizations through grants, cooperative agreements, and contracts. Both the intramural and extramural programs interact with academic research institutions and substantially affected organizations in many ways, both formal (e.g., funding agreements, research agreements, intellectual property licenses, and research and development contracts) and informal (e.g., exchange of research materials and other research collaborations, public and private scientific discussions, and joint sponsorship of projects). The official actions of many NIH employees can affect the financial interests of a broad range of businesses and organizations, including health care providers and health insurers, often in subtle ways. Informed by recent experience, it is appropriate to limit broadly employees' outside activities with those entities to avoid any appearance that official actions may be potentially influenced by private financial interests or loyalty to an outside employer.

The current HHS supplemental regulation on outside employment and other outside activities, 5 CFR 5501.106, prohibits employees of the NIH and other employees of HHS from providing certain services, for compensation, in the preparation of grant applications, contract proposals or other documents to be submitted to HHS, and from compensated outside employment with respect to a particular activity funded by an HHS grant, contract, cooperative agreement, or other funding mechanism authorized by statute, or conducted under a cooperative research and development agreement (CRADA).

Under § 5501.109(c)(1) of this interim final rule, subject to certain exceptions, all NIH employees are also prohibited from engaging in employment (which includes serving as an officer, director, or other fiduciary board member, serving on a scientific advisory board or committee, and consulting or providing professional services) and compensated teaching, speaking, writing, or editing with a substantially affected organization; a hospital, clinic, health maintenance organization, or other health care provider (defined comprehensively to include the types of entities that are eligible to receive payments under the Medicare program for the provision of health care items or services); a health insurer; a health, science, or health research-related trade, professional, consumer, or advocacy association; or a supported research institution.

A "substantially affected organization" is defined in paragraph (b)(8) to include those entities, irrespective of corporate form, that are engaged in the research, development, or manufacture of biotechnological, biostatistical, pharmaceutical, or medical devices, equipment, preparations, treatments, or products. The term includes those organizations a majority of whose members are engaged in such activities.

Section 5501.109(b)(8)(iii) also permits the designated agency ethics official or, in consultation with the designated agency ethics official, the NIH Director or the NIH Director's designee to determine that other entities shall be classified as substantially affected organizations. These determinations will be based upon whether such entities are engaged in activities that are substantially affected by the programs, policies, or operations of the NIH and whether, in view of the ongoing research conducted or sponsored by the NIH, interests in these organizations are likely to pose ethics

concerns for NIH employees similar to those presented by the entities specifically listed in paragraph (b)(8)(i). This authority might be used, for example, to cover a food, beverage, or tobacco manufacturer, if its products became a pervasive subject of NIH research activities into the health benefits or detriment associated with the product or its ingredients, and the research activities required a substantial coordinated effort across institutes and centers, such that it would be necessary or appropriate to apply a prophylactic rule applicable to all NIH employees. Lists of organizations designated as substantially affected organizations under paragraph (b)(8)(iii) will be maintained by the designated agency ethics official and the NIH deputy ethics counselor and disseminated to employees through appropriate means, including website posting.

A "supported research institution" is defined in paragraph (b)(9) as an educational institution or a non-profit independent research institute that within the last year or currently has applied for, proposed, or received an NIH grant, cooperative agreement, research and development contract, or CRADA.

Employees are also prohibited under paragraph (c)(1) from engaging in any self-employed business activity that involves the sale or promotion of products or services of a substantially affected organization or a health care provider or insurer. This section excepts the ownership of a patent or related commercialization activities conducted pursuant to Executive Order 10096, the Federal Technology Transfer Act of 1986 (FTTA), 15 U.S.C. 3710d, or implementing regulations at 37 CFR 404, as amended. Those activities will continue to be reviewed and approved on a case-by-case basis in accordance with existing conflict of interest and other applicable rules and policies. For example, under the FTTA the NIH might allow an employee inventor to obtain, or retain, title to an NIH invention, because the NIH has determined that it does not wish to file for a patent or otherwise commercialize the invention. The activities of owning that invention in a personal capacity, seeking and owning patent protection on that invention in a personal capacity, and engaging in commercialization activities related to that invention have been encouraged under the FTTA, and are not automatically prohibited by this regulation. Instead, these activities will continue to be scrutinized in accordance with the facts of each situation to determine whether they present a conflict or potential conflict and the situation should be managed to best serve the public interest.

These prohibited outside activities rules are applicable to all NIH employees, but are focused on those types of activities and external entities that may pose the most significant risk of potential conflicts. In addition, the need for prophylactic rules barring certain types of outside activities derives from the considerable complexity of the current regulatory scheme, the intractable difficulties encountered at NIH in differentiating scientific work performed as an official duty from that proposed as an outside activity, and the significant administrative burden inherent in case-by-case determinations.

The outside activity prior approval process is complicated. The following discourse describes the analysis required for each potential outside activity: Approval requires an assessment of whether the proposed outside activity violates any statute or regulation, including the OGE Standards of Ethical Conduct for Employees of the Executive Branch or the HHS Supplemental Ethics Regulation. Included in the OGE Standards is the requirement that the proposed outside activity cannot create an actual or apparent conflict that would result in recusals that would materially impair an employee's ability to do his job.

In evaluating outside activities for conflicts, the reviewer initially addresses two provisions that form the core of Federal ethics law. A criminal statute, 18 U.S.C. 208, deals with an "actual conflict" due to the employee's own or imputed financial interest in the resolution of a government matter. A regulatory provision in the OGE Standards, 5 CFR 2635.502, principally addresses disqualifications called for when an "appearance of a conflict" arises from a "covered relationship."

Under section 208 of the criminal code, to avoid a conflict of interest that results from outside employment, among other types of financial interests, a Federal employee must not participate personally and substantially in a particular matter that, to his knowledge, directly and predictably affects his own financial interest in the employment opportunity or the financial interests of his outside employer. To prevent an "appearance of a conflict" that results from serving in a role short of employment, for example, as an advisor, consultant, or other type of independent contractor compensated with fees and expenses, a different rule applies. Under section 502 of the regulations, if a reasonable person with knowledge of the relevant facts would question the Federal employee's impartiality, the employee must recuse, but only from "particular matters involving specific parties," such as grants, contracts, applications, clinical trials, audits, investigations, or lawsuits that involve, as a party or representative of a party, the company to which the employee is providing consulting services.

Both sections are disqualification provisions in that they do not prohibit the acquisition of an employment or consulting relationship, rather they bar actual "participation" in a potentially conflicting matter, either personally or through the direct and active supervision of the participation of a subordinate. However, neither section is triggered by mere knowledge of, or official responsibility for, a particular matter. In short, if an employee can recuse appropriately and still be able to perform the duties of his position, then an outside activity may be approved, provided there are no other statutory or regulatory impediments.

A number of statutes and regulations preclude certain outside activities. For example, if an employee seeks approval to be a lobbyist before the Federal Government, the anti-representation statutes, 18 U.S.C. 203 and 205, would be implicated. If the activity is clearly one that should be done as an official duty, such as an official speech on agency programs, then approval would be denied, under 18 U.S.C. 209, as an improper salary supplementation.

If the circumstances would create an appearance of violating ethical standards, for example where the employee appears to have used his official position to obtain an outside compensated business opportunity or his actions reasonably create the impression of using his public office for the private gain of the outside company, then under the principles in the OGE Standards, 5 CFR 2635.101(b), and the rules governing misuse of position, 5 CFR 2635.702, the outside activity may be denied. An arrangement for compensation that far exceeds a market rate or that involves first class or foreign travel or extravagant accommodations, for example, may create the appearance that the offer was made or the remuneration was enhanced due to the employee's official position. Another situation cited in the OGE Standards in example 2 following 5 CFR 2635.802 would be where an employee was recently instrumental in formulating industry standards and will again be so involved. If an affected company offers a consulting contract to the employee to render advice to the company about how it can restructure its operations to comply with the very industry

standards that the employee has just drafted, the consulting arrangement should not be approved even though the employee lacks any current assignments affecting the industry, and even though the outside consulting can be finished before he again works on such matters.

Another regulation, 5 CFR 2635.807 precludes compensation, subject to certain exceptions, if an employee wants to teach a course, deliver a speech, or write a book that relates to his official duties. (Consulting, technically, is not covered by this section, but the analysis in section 807 does provide guidance in evaluating many outside activities.) The "relatedness" test evaluates, among other factors, the subject matter of the activity. For career employees, compensation is precluded if the teaching, speaking, or writing deals in *significant* part with any current assignment (or one completed within the last year) or any ongoing policy, program, or operation of the agency. However, in a note following the provision, OGE observes that a career employee may receive compensation for "teaching, speaking, or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the [activity] deals generally with a subject within the agency's areas of responsibility." But this textual note does not lessen the applicability of other requirements of section 807, notably that the invitation to engage in the activity must not have been extended to the employee primarily because of his official position or tendered, directly or indirectly, by a person or entity that has interests that may be affected substantially by the performance or nonperformance of the employee's official duties. The circumstances of the invitation and the identity of the inviter are as important as the subject matter of the activity.

Determining whether an invitation was prompted by official position requires an inquiry into whether the invitation to participate in the outside activity would not have been forthcoming had the employee not held the status, authority, or duties associated with the employee's Federal position. Resolving whether the inviter has interests that may be affected substantially by the performance or nonperformance of the employee's official duties depends upon whether it is reasonable to assume that the invitee may become involved in a matter substantially affecting the inviter, or whether the chance of such intervention is simply a remote and speculative possibility. These judgments are at times difficult and capable of reasonable debate.

Ascertaining whether the subject matter of the proposed activity deals significantly with a current or recent assignment often may be particularly difficult given the technical scientific nature of the research conducted or funded by the NIH. For example, only a trained expert could discern whether a scientist engaged in basic research on the molecular basis for the development of skin cancer could be approved to lecture for compensation on the etiology of acute lymphocytic leukemia. The analysis would focus on whether the presenter, in discussing the latter subject, would draw substantially on the knowledge gleaned from the former. Parsing through biomedical jargon to exclude the possibility of a significant overlap is not a task to which the current NIH ethics program is well-suited.

This analytical framework is comprised of requirements that apply across the executive branch. While the framework may be capable of being applied readily at other agencies, historically NIH has confronted unique challenges in implementing these executive branch-wide requirements. In its recent review of the NIH ethics program, OGE noted that, in examining outside activity requests, its reviewers generally were not in a position to identify potential conflict of interest situations because a lack of scientific expertise prevented them from determining how the employees' official duties may have related to their outside consulting activities. The Office of Government Ethics observed that a case-by-case approach utilizing the executive branch-wide standards has not been adequate to protect the reputation of the NIH and its employees. It strongly recommended that the Department develop supplemental regulations to address the kinds of consulting activities that have raised integrity concerns at the NIH.

This rule in fact expands upon that recommendation by addressing other activities that may pose similar concerns. Compensated teaching, speaking, and writing activities when performed by an NIH scientist for a substantially affected organization or a supported research institution can be no less troubling to the public than employment or consulting with these entities. Where biomedical research and publication activities are involved, any financial connection to affected industries may be perceived adversely. The British charitable trust, Sense About Science, in a recent working paper on scientific peer review observed this phenomenon in the context of sponsored research, stating that often "critical commentators simply emphasi[z]e the source of research funding in order to imply that the researcher's findings may be unreliable in some unspecified way." Sense About Science, *Peer Review and the Acceptance of New Scientific Ideas* (2004), p. 18, available at *www.senseaboutscience.org.uk/*.

For the NIH, section 807 does not adequately address this problem. Steps have been taken to incorporate review by a panel of technical advisors into the outside activity approval process in order to verify that the subject matter of a proposed activity is not related to official duties within the meaning of section 807. Efforts to augment training and guidance on the section have been initiated, and additional staff resources have been committed to its implementation. However, neither the addition of scientific expertise, nor training, nor improved administration can avoid the result that section 807 at times permits activities that members of the public might intuitively suppose are prohibited. For example, under current law, an NIH intramural researcher who proposes to deliver a paid lecture on general scientific topics within her inherent area of expertise for a drug company or a grantee university potentially may be allowed to do so if the various tests under section 807 and other applicable provisions are satisfied. Explanations—such as the lecture would not focus on any current or recent research; or the drug company did not have a product affected by her research; or although the university received a grant from her institute, she was not responsible for extramural funding decisions—may be perceived as legal technicalities.

Section 5501.109(c)(1)(ii) addresses this inherent perception problem and solves the difficulty of evaluating scientific content under the "relatedness" test by targeting the prohibition to those sources of compensation for teaching, speaking, and writing activities that are most directly connected to these identified problems, i.e., substantially affected organizations, supported research institutions, health care providers or insurers, or related trade, professional, or similar associations. These sources of compensation by definition have interests that are affected by NIH programs, policies, and operations and may be perceived as exerting influence on an employee's governmental actions whenever a financial relationship exists. Recent press accounts alleging NIH employee participation as compensated

industry spokespersons or as authors of articles or other presentations that purport to endorse the benefits of specific products highlight this concern. Moreover, these entities, whether in industry or academia, are among those most likely to ask an NIH employee to speak or write on technical subjects related to their official duties, thus presenting the analytical quandary previously described when applying the "subject matter" part of the "relatedness" test in section 807.

Although stringent limitations on outside activities have been imposed, the Department is especially mindful of the need for substantive interaction within the scientific community. As the National Academy of Sciences has stated:

> [S]cience is inherently a social enterprise—in sharp contrast to a popular stereotype of science as a lonely, isolated search for the truth. With few exceptions, scientific research cannot be done without drawing on the work of others or collaborating with others. ... The object of research is to extend human knowledge of the physical, biological, or social world beyond what is already known. But an individual's knowledge properly enters the domain of science only after it is presented to others in such a fashion that they can independently judge its validity. This process occurs in many different ways. Researchers talk to their colleagues and supervisors in laboratories, in hallways, and over the telephone. They trade data and speculations over computer networks. They give presentations at seminars and conferences. They write up their results and send them to scientific journals, which in turn send the papers to be scrutinized by reviewers. After a paper is published or a finding is presented, it is judged by other scientists in the context of what they already know from other sources. Throughout this continuum of discussion and deliberation the ideas of individuals are collectively judged, sorted, and selectively incorporated into the consensual but ever evolving scientific world view. In the process, individual knowledge is gradually converted into generally accepted knowledge. * * * The social mechanisms of science do more than validate what comes to be known as scientific knowledge. They also help generate and sustain the body of experimental techniques, social conventions, and other "methods" that scientists use in doing and reporting research. * * * Because they reflect socially accepted standards in science, their application is a key element of responsible scientific practice.
>
> National Academy of Sciences, *On Being a Scientist.* (Washington, D.C.: National Academy Press, 1994).

Therefore, it is important to observe that the impact of the regulatory ban on outside activities is mitigated in several significant respects, through a transition period, a waiver provision, textual exceptions, and future actions that the Department has committed to undertake.

First, the prohibition provides for a grace period to allow employees responsibly to conclude outstanding obligations. Employees may continue to engage in outside activities that would otherwise be prohibited for a period not to exceed 30 days from the effective date of the rule, and extensions of time for a maximum of 90 days from the effective date may be granted for good cause.

Second, a process exists under § 5501.106(e) for the designated agency ethics official to waive the application of the across-the-board rule in appropriate circumstances.

Third, as to the teaching, speaking, writing, and editing restrictions, it should be stressed that the ban reaches only compensated activities; travel reimbursement will be permitted.

Fourth, the NIH has determined that current policies and practices governing permissible official duty activities involving speaking or lecturing should be revised. Consequently, the NIH has decided to develop means to ensure that NIH scientists' knowledge continues to be conveyed to the scientific community at large. The NIH will act administratively to accommodate, as official duty activities, those speaking opportunities that might previously have been considered less directly connected to agency mission. The NIH will consider expanding the availability of scientists to appear before relevant audiences and organizations at government expense, when appropriate, or through agency acceptance of travel reimbursement from non-Federal sources under 31 U.S.C. 1353, where permitted.

Fifth, the regulations contain exceptions designed to facilitate professional obligations and certain academic endeavors. These exceptions partially lift the absolute bar on outside activities with supported research institutions and other organizations (except substantially affected organizations) described in § 5501.109(c)(1), but they do not affirmatively permit an activity that would otherwise violate Federal law or regulations, including 5 CFR parts 2635, 2636, and 5501. Specifically, exceptions are provided that will allow participation in pursuits that are critical to maintaining technical proficiency, professional licenses, and academic credentials and disseminating scientific information, such as teaching involving multiple presentations at academic institutions, providing individual patient care, moderating or presenting at continuing professional education programs, and writing or editing scientific articles, textbooks, and treatises that are subjected to scientific peer review or a substantially equivalent editorial review process. The rule also contains exceptions for employment with, providing professional or consultative services to, or teaching, speaking, writing, or editing for, a political, religious, social, fraternal, or recreational organization. The rule also recognizes that individuals may be employed in non-problematic roles with outside entities such as providing clerical assistance, janitorial services, or unskilled labor.

The exception for moderating or speaking at continuing professional education programs extends not only to sessions conducted for members of professions that impose licensure and program accreditation requirements, but includes events at which scientists, such as chemists or microbiologists, gather to share new insights and findings in their respective fields, provided that the educational events are substantially equivalent to those frequented by their professionally licensed colleagues.

The licensing and program accreditation infrastructure established by certain learned professions generally has not been adopted by doctorates in scientific research. Most professional groups have promulgated standards for their educational programs that are designed to avoid conflicts, commercial promotion, and control by industry sponsors. See, for example, American College of Surgeons Guidelines for Collaboration of Industry and Surgical Organizations in Support of Research and Continuing Education, available at *www.facs.org/fellows_info/statements/st-36.html;* American Society of Consultant Pharmacists Guidelines for Industry Support of ASCP Educational Activities, available at *www.ascp.com/public/pr/guidelines/indsupp.shtml;* and the discussion generally in the Food and Drug Administration publication entitled "Final Guidance on Industry-Supported Scientific and Educational Activities; Notice" at 62 FR 64074, Dec. 3, 1997. These groups police educational activities at which NIH employees may be asked to speak through strict policies limiting industry support to unrestricted educational grants. To provide a similar assurance in all contexts, including at gatherings convened by scientists and researchers from various academic disciplines, the regulations explicitly negate the exception if a substantially affected organization plays a role other than that of a donor of an unrestricted educational grant.

In addition, in order to ensure that the exception is limited to continuing professional education or similar programs, as intended, and not interpreted to encompass every speaking occasion that has some educational content or instructional benefit, the regulation confines the exception to accredited programs or, in the case of a profession or academic discipline whose members are not subject to licensure and which does not have program accreditation requirements, an education program determined by the designated agency ethics official or his designee or, in consultation with the designated agency ethics official or his designee, the NIH Director or the NIH Director's designee to be substantially equivalent to an accredited continuing professional education program.

In determining substantial equivalency for these purposes, a number of factors may be considered. Among them would be whether the education program is sponsored by a regional, national, or international organization that serves the interests of scientists or researchers in a specific discipline (e.g., neuroscientists or experimental biologists). Another attribute would be whether, as part of its mission, the program sponsor has a stated goal of ensuring that audience members remain current with respect to the latest scientific developments in their field of interest. Also important is the extent to which the sponsor regularly holds meetings that attract presenters and panel participants who are renowned for their expertise in the topics covered. Similarly critical is whether the education program is characterized by sufficient academic rigor and known within the scientific community as a venue that enables scientists to disseminate and exchange the latest information, particularly, among different sub-disciplines (e.g., inorganic chemistry as opposed to organic chemistry). An education program conducted by a well established sponsor that has a longstanding reputation for presenting refereed papers and other scientific discourse of high caliber and which attracts, from around the globe, attendees of diverse viewpoints within the relevant discipline would be the paradigm.

The regulation includes an exception for writing activities subjected to scientific peer review or substantially equivalent editorial processes. Scientific peer review is commonly understood in principle, with the primary purposes being to "evaluate scientific and technical merit," "screen for obvious errors in methodology and reasoning," and "ensure that the research is novel and "important"' within the relevant discipline. Effie J. Chan, Note, The "Brave New World" of Daubert: True Peer Review, Editorial Peer Review, and Scientific Validity, 70 *N.Y.U. L. Rev.* 100, 119 n.121 (1995). The concept of scientific peer review also generally involves the application of standards governing scientific misconduct and research integrity. *E.g.*, International Committee of Medical Journal Editors, *Uniform Requirements for Manuscripts Submitted to Biomedical Journals: Writing and Editing for Biomedical Publication* (2004), available at *http://www.icmje.org*. HHS recognizes that actual editorial processes may vary in practice, for example, in terms of number of levels of review and the extent to which the publisher or journal relies on outside reviewers. Therefore, the exception is intended to cover writings subjected to any scientific peer review or substantially equivalent processes that are designed to ensure that the material disseminated is scientifically accurate, has technical merit, demonstrates originality, evinces an important contribution to the body of knowledge, and adheres to research and scientific conduct standards generally accepted within the relevant discipline.

Section 5501.110 Prohibited Financial Interests Applicable to Employees of the National Institutes of Health

New § 5501.110 creates, for employees of the NIH who file either a public or confidential financial disclosure report, a prohibited financial holdings regulation that bars owning a financial interest, such as stock, in substantially affected organizations. In accordance with 5 CFR 2635.403(a), the Department has determined that the acquisition or holding of these financial interests would cause a reasonable person to question the impartiality or objectivity with which NIH programs are administered.

Public and confidential filers by definition are senior officials or other employees whose duties involve the exercise of significant discretion in certain critical areas of agency operations. Section 5501.110 is similar to an existing financial holdings restriction applied to FDA employees that dates back to 1972. The current version of the restriction applicable to FDA employees was part of the HHS Supplemental Ethics Regulation as it was first issued in 1996, and is found at § 5501.104. Since the enactment of the HHS Supplement, the work of the NIH has been determined to pose similar unique challenges for the agency ethics program. NIH employees, like FDA employees, participate in particular matters that substantially affect significant sectors of the United States economy, in particular, the pharmaceutical, medical device, and biotechnology industries. Even the food and beverage sector that is more associated with the FDA has begun to come within the NIH sphere through research on obesity and other diet-related conditions. Many NIH employees have access to confidential commercial information and trade secrets, the misuse of which can have serious financial consequences. Unethical conduct in this context, including misuse of information, could have serious public health consequences. In sum, the NIH has a compelling need to monitor, and impose reasonable prophylactic restrictions on, the financial ties between NIH employees and the vast number of entities that are substantially affected by NIH programs.

Therefore, § 5501.110 creates a prohibited financial holdings rule that serves the above-described interests and relieves the NIH of the significant administrative burden of resolving many conflict of interest problems on a case-by-case basis. However, § 5501.110 is narrowly tailored in three important respects. First, § 5501.110 distinguishes between interests in organizations that are substantially affected by NIH programs, policies, or operations, *i.e.*, those organizations principally involved in the pharmaceutical and biotechnology industries, and those interests that are not in such organizations. Second, § 5501.110 imposes the strictest limitations on employees whose duties carry the greatest potential for conflict of interest, *i.e.*, those employees who are required to file either a public financial disclosure statement or a confidential financial disclosure statement, pursuant to 5 CFR part 2634. Third, § 5501.110 incorporates a mechanism to exclude certain confidential filers or classes of confidential filers from the prohibited holdings requirement if the across-the-board prohibition is deemed unnecessary to ensure public confidence in the integrity of agency operations and their positions do not fall in certain enumerated categories nor entail responsibilities that are likely to pose conflicts related to financial holdings.

While the new rule prohibits public and confidential filers at the NIH from holding or acquiring any interest in a substantially affected organization, all other NIH employees (as well as those confidential filers excluded from

coverage by the rule) will be subject to a $15,000 limit on the holding or acquisition of such interests and certain other restrictions. Currently, in order to avoid a conflict of interest, these employees must monitor their work activities and know the identity and value of their holdings at any given moment. A regulatory exemption at 5 CFR 2640.202 allows employees to work on specific party matters, such as contracts, grants, investigations, or clinical trials, as long as the value of the affected stocks does not exceed $15,000, and on a general matter, such as rulemaking or policy determination, if the value of any one affected holding does not exceed $25,000, subject to a $50,000 cap when cumulating all affected interests. However, if the asset value exceeds these thresholds, employees must recuse from official participation in particular matters that would have a direct and predictable effect on the financial interests of the companies in which they are invested. These monitoring and recusal responsibilities are exacerbated by the increasing number of mergers, acquisitions, joint ventures, partnerships, intellectual property licensing agreements, and even name changes, particularly within the biotechnology and pharmaceutical industries that, on any given day, may make it difficult to know whether one has a conflict to avoid. By imposing a $15,000 cap on such holdings, the employee, the NIH, and the public can be better assured that the participation by NIH employees in their respective work assignments, whether specific or general in scope, does not pose a conflict created by stock holdings. The $15,000 cap will adjust automatically to any change in the *de minimis* exemption limit for matters involving parties at 5 CFR 2640.202(a).

Although the dollar amounts in the two provisions are linked, substantively they differ in an important respect. Not all financial interests valued at $15,000 or less will be covered by the OGE regulatory exemption. For example, although the NIH exception permits a non-filer to hold a financial interest in a non-publicly traded company (assuming all the other criteria in the section are also satisfied), the OGE regulatory exemption only applies to securities in publicly traded companies or long-term Federal Government or municipal securities. Accordingly, NIH employees are reminded that even though § 5501.110 may allow retention of certain assets that would otherwise be prohibited, the financial interest may nevertheless be problematic under 18 U.S.C. 208. Absent a regulatory exemption that specifically addresses the financial interest, a recusal, a divestiture, or an individual waiver may be required.

The prohibitions relating to financial interests will apply to the spouses and minor children of NIH employees. Inasmuch as the financial interests of these relatives are imputed to employees and pose identical conflicts concerns, the Department has made the determination, pursuant to 5 CFR 2635.403(a), that there is a direct and appropriate nexus between this prohibition as applied to spouses and minor children and the efficiency of the service. It should be noted, however, that § 5501.110 is not intended to prohibit employment by spouses and minor children in the affected industry sectors, although any actual or apparent conflicts of interests created as to NIH employees by such employment must be resolved under other applicable provisions of 5 CFR part 2635.

Section 5501.110(e)(1) permits the holding of financial interests acquired through employment with a substantially affected organization. This exception is intended to parallel the FDA provision at amended § 5501.104(b)(1) that excepts pensions or other employee benefits derived from employment with a significantly regulated organization. This exception is necessary to facilitate recruitment of qualified scientific and professional personnel, many of whom may have begun their careers in industry. Because NIH employees, as opposed to spouses and minor children of employees, are generally prohibited under § 5501.109 from engaging in current employment with a substantially affected organization, the provision will primarily apply to financial interests acquired through employment prior to joining the agency. However, it may apply in the limited number of instances in which NIH employees are permitted to have a concurrent employment relationship with a substantially affected organization, such as a clerical position excepted by § 5501.109(c)(3)(iii), that may provide a pension or other employee benefits.

Section 5501.110(e)(2) excepts financial interests in substantially affected organizations that result from holding an interest in certain publicly traded or publicly available investment funds or a widely held pension or similar fund. To qualify for this exception, the fund must not be self-directed and must not have an express policy or practice of concentrating its investments in substantially affected organizations. For example, a widely diversified mutual fund generally would be a permissible holding, even though the fund holds some stocks of substantially affected organizations whereas a sector fund that focuses on the pharmaceutical industry would not.

Furthermore, § 5501.110(e)(3) provides NIH employees with the opportunity to request an individual exception for certain financial interests. Where the employee can demonstrate exceptional circumstances, the NIH may allow an individual to hold a financial interest in a substantially affected organization, provided that the application of the financial interest prohibition is not necessary to ensure public confidence in the impartiality or objectivity with which NIH programs are administered or to avoid a violation of 5 CFR part 2635.

Pursuant to 5 CFR 2635.403(d), an employee shall be given a reasonable period of time, considering the nature of the employee's particular duties and the nature and marketability of the interest, to divest a financial interest prohibited by paragraphs (c) and (d) of this section. Except in cases of unusual hardship, as determined by the NIH deputy ethics counselor in consultation with the designated agency ethics official or his designee, a reasonable period shall not exceed 90 days from the date divestiture is first required. For those current employees who will be affected immediately by the promulgation of this rule, it is anticipated that individual requests for divestiture periods of up to 180 days will be granted upon an adequate showing of good cause, such as difficulties in disposing of non-publicly traded assets or a significant adverse financial impact on the employee, the company, or the securities market. During any period in which the employee continues to hold the prohibited financial interest, the employee remains subject to the restrictions imposed by subpart D of 5 CFR part 2635.

As specified in 5 CFR 2635.403(e), an employee who is required to sell or otherwise divest a financial interest and thereby incurs a capital gain may be eligible to defer the tax consequences of divestiture under subpart J of 5 CFR part 2634. This special tax treatment is unavailable if the employee fails to comply with the requisite procedures and disposes of the financial interest prior to receiving a certificate of divestiture from the Director of the Office of Government Ethics.

Section 5501.110(g), for the reasons discussed previously in connection with the FDA provision at § 5501.104(c), specifies that the requirement to divest a financial interest prohibited by

paragraphs (c) and (d) of this section is not triggered until the due date for reporting prohibited financial interests under the applicable financial disclosure rules in parts 2634 and 5502 of this title.

Section 5501.111 Awards Tendered to Employees of the National Institutes of Health

Section 5501.111 prohibits senior NIH employees and other employees with official responsibility for matters affecting donor organizations from accepting certain awards from outside sources. For these purposes, the term "senior employee" includes, among others, the NIH Director and Deputy Director and the Director, Deputy Director, Scientific Director, and Clinical Director of each Institute and Center within NIH. Other employees of equivalent levels of responsibility will be subject to the award prohibition if their positions are comparable in terms of authority or influence over agency programs and operations, and they receive written notification of their designation as a "senior employee" by the designated agency ethics official or the NIH Director. (A list of "senior employees" so designated will be maintained by the designated agency ethics official and the NIH and disseminated through program instructions or manual issuances.) Further, any award permitted under 5 CFR 2635.204(d) that is not prohibited by this section cannot be accepted without prior written approval.

Section 5501.111 will have no impact on any employee's ability to receive an award that consists only of a plaque or certificate or other item with little intrinsic value that is intended solely for presentation purposes. Such items are not deemed to constitute a gift for purposes of the Standards of Ethical Conduct, 5 CFR part 2635. Likewise, an employee would be permitted to accept free attendance and food and other refreshments at an event in which the employee is presented a plaque or certificate or other item with little intrinsic value under circumstances permitted by 5 CFR 2635.204, such as a speaking engagement or widely attended gathering. Moreover, under certain circumstances, an employee may be permitted by the agency to travel at the award donor's expense to an event at which the employee is to be honored. If travel reimbursement is accepted from a non-Federal source by the employee's agency, under the authority of 31 U.S.C. 1353 and 41 CFR chapter 304, in conjunction with the employee's receipt of an award in recognition of meritorious public service that is related to the employee's official duties, the reimbursement of such expenses to the agency is not a personal gift to the employee and hence not an award or incident of an award for purposes of 5 CFR 2635.204 or this section.

Specifically, § 5501.111(b) mandates that a senior employee will not be permitted to accept a gift with an aggregate market value of more than $200, or that is cash or an investment interest, that is an award or incident to an award given because of the employee's official position or from a prohibited source. Moreover, it provides that an employee, other than a senior employee, cannot accept such a gift from a person, organization, or other donor that: Is seeking official action from the emplovee, any subordinate of the employee, or any agency component or subcomponent under the employee's official responsibility; does business or seeks to do business with any agency component or subcomponent under the employee's official responsibility; conducts activities substantially affected by any agency component or subcomponent under the employee's official responsibility; or is an organization a majority of whose members fall into one of the above categories. In other words, an NIH employee may not accept a cash award or one valued at more than $200 that is tendered by a donor that has matters pending under the employee's official responsibility, either individually or before subordinates in the employee's chain of command, irrespective of whether the matter would ever reach the employee for advice or decision. Thus, as a practical matter, the rule would not affect the ability of a non-supervisory employee to accept gifts under 5 CFR 2635.204(d), except for the requirement of prior approval. In addition, a supervisor who is not a senior employee would be permitted to accept gifts allowed under 5 CFR 2635.204(d) that are either given to the supervisor because of official position or from a prohibited source of the NIH that has no matters under the supervisor's official responsibility.

Section 5501.111(b) departs from executive branch uniformity with respect to the treatment of awards. It imposes a stricter gift standard by partially limiting the applicability of an exception to the gift restrictions in subpart B of part 2635 of this title. In the preamble to the final rule that established the Standards of Ethical Conduct for Employees of the Executive Branch, OGE expressed concern about using the supplemental ethics regulation process as a means for one agency, for example, to bar all its employees, without regard to the nature of their duties, from accepting anything from a regulated entity. Permitting agencies to change the basic rules would "portend * * * an ethics program destined to fall short of meeting the President's goal of a uniform set of standards of conduct for all executive branch employees." 57 FR 35012, Aug. 7, 1992. Specifically, OGE stated as follows:

> Section 2635.105 [of title 5] permits supplemental regulations "which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part" and that are "(1) in the form of a supplement * * * and (2) in addition to the substantive provisions of this part." The requirement that they be "in addition" means that the basic provisions will apply and that a supplemental regulation can add something more, such as an additional gift exception, but cannot be used to negate or revoke the provisions of this part. The uniformity required by the Executive order cannot be achieved if agencies can pick and choose which provisions they adopt or override.

57 FR 35010, Aug. 7, 1992.

As a result of the high profile research activities conducted and supported by the NIH and the significant contributions by NIH scientists and administrators in their respective fields, these employees are considered for awards by philanthropic foundations, professional associations, industry, academia and others with some frequency. The Blue Ribbon Panel, in particular, observed an increasing number of awards established by universities that have received grants from family funds for this purpose, stating:

> The growth in the number of these awards has been attributed to many factors, including the wish to honor worthy scientists in new and emerging fields and the goal of individuals and charitable organizations to boost their scientific credentials by identifying themselves with and rewarding first-class scientists. Scientists who receive these awards are frequently required to prepare a lecture as an "acceptance speech." The cash prizes for these awards can range from a few hundred to thousands of dollars.

Blue Ribbon Panel Report, p. 51.

Reviewing these awards on a case-by-case basis presents a number of difficulties. Individual award determinations currently require the agency to evaluate the extent to which the award donor has interests that may be substantially affected by the performance or nonperformance of the honoree's official duties. The Acting Director of OGE in a statement on May 18, 2004, before the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations (OGE

Statement) established a list of factors for agency officials to consider when providing advice on acceptance of awards, including factors related to whether an office head is likely to become involved in matters substantially affecting the interests of the particular source, and whether the primary purpose of a payment is to honor the employee for meritorious public service or achievement, or to compensate the employee for services as a speaker. See Statement of Marilyn L. Glynn, Acting Director, OGE, on NIH Ethics Concerns: Consulting Arrangements and Outside Awards Before the Committee on Energy and Commerce Subcommittee on Oversight and Investigations, United States House of Representatives on May 18, 2004, available on the OGE Web site as an attachment to DAEOGram DO–04–011 at *http://www.usoge.gov/pages/daeograms/dgr_files/2004/do04011.html*. The reviewer must inquire whether it is reasonable to assume that the honoree may become involved in a matter substantially affecting the interests of the donor, or whether the chance of such intervention is simply a remote and speculative possibility. Moreover, as recognized in the OGE Statement on awards:

> [I]t may not always be immediately apparent to employees and agency officials whether a particular offer from an outside source should be viewed as a gift subject to the awards exception or as compensation for a speaking activity. This is especially true where an employee is offered something of value in connection with a "lectureship" or "lecture award" sponsored by an outside organization. In some instances, it may not be clear whether the real intent of the payment is to honor the employee for meritorious public service or achievement, or to compensate the employee for providing a speech on a subject of interest to the sponsor or the intended audience.

OGE Statement, p. 7.

Although OGE has provided a number of evaluative factors to consider in making these determinations, a bright-line rule relieves the NIH of the significant administrative burden of resolving these issues on a case-by-case basis and avoids the potential for adverse public perception that may arise when civil servants receive payments from outside sources. The Government generally has a legitimate interest in avoiding even the perception that its decisions are influenced by outside interests. As indicated by recent experience, this interest is particularly acute in an agency that is the "principal steward" of the national investment in biomedical research.

The Department is also mindful of the need to attract and retain preeminent scientists and administrators. As stated by the Blue Ribbon Panel:

> Recognition is a critical incentive for motivating scientists. Awards resulting from the critical evaluation and assessment of an individual's or group's work or career by peers, including distinguished scientists, hold considerable value to the recipients. Awards not only raise the visibility of the scientist, but also enhance the reputation of his or her institution and research area.

Blue Ribbon Panel Report, p. 51. It is important, therefore, to note that the rule bars only the receipt of a gift with an aggregate market value of more than $200, or that is cash or an investment interest, tendered as an award or incident to an award. The intangible honor that inheres in the recognition as an award recipient, where unaccompanied by gifts having a market value or involving cash or cash equivalents, remains an achievable goal unaffected by the prohibition in § 5501.111(b).

Moreover, under § 5501.111(c), the NIH Director (or the Secretary, with respect to awards offered to the NIH Director), with the approval of the designated agency ethics official, may grant a written exception to the prohibition in § 5501.111(b) to permit an employee to accept an award if: (1) The NIH Director determines that acceptance of the gift will further an agency interest because it confers an exceptionally high honor in the fields of medicine or scientific research, for example, the Nobel Prize in Physiology or Medicine or the Lasker Medical Research Award; (2) absent the prohibition, the employee would have been permitted to accept the gift under 5 CFR part 2635; and (3) the designated agency ethics official determines that the application of the prohibition is not necessary to ensure public confidence in the impartiality or objectivity of NIH programs or to avoid a violation of 5 CFR part 2635.

The rule also specifies that no NIH employee shall accept an award under 5 CFR 2635.204(d) or § 5501.111 unless prior written approval has been granted. The approval must be in accordance with procedures specified by the designated agency ethics official, or with the concurrence of the designated agency ethics official, the NIH Director or the NIH Director's designee. These procedures are not specified in the regulation because the requirements for issuing supplemental standards of conduct do not apply to internal agency procedures for documenting or processing any determination, approval, or other action required by supplemental regulations. 5 CFR 2635.105(c)(2)(ii). Nevertheless, HHS anticipates that such procedures will prescribe a number of steps of review and may take the following form.

First, the award would be pre-screened and evaluated by an independent advisory committee, which would advise on whether the award constitutes a *bona fide* award given for meritorious public service or achievement as part of an established program of recognition under the criteria specified in the Standards of Ethical Conduct, 5 CFR 2635.204(d)(1)(i) and (ii). In advising whether an award is *bona fide* for these purposes, the advisory committee would evaluate whether, under all the circumstances, an award program is constituted by the donor primarily to provide gratuitous honorific recognition of achievement or whether it is primarily compensatory in nature, for example, to obtain a speaker for a lecture, a teacher for a seminar, or a presenter or panelist for a symposium.

Second, if the independent advisory committee advises that the award is part of a *bona fide* program of recognition for meritorious public service or achievement, the receipt of the award by an individual employee would be submitted for internal peer review by the NIH Ethics Advisory Committee (NEAC) (or other successor body designated by the NIH Director) for its recommendation to the NIH deputy ethics counselor. To be accepted, the award would have to receive an affirmative recommendation by the NEAC. In the case of an award offered to the NIH Director, the Director of the National Cancer Institute, or other political appointee, the recommendation of the NEAC would be forwarded to the designated agency ethics official.

Third, if the independent advisory committee advises that the award is part of a *bona fide* program of recognition for meritorious public service or achievement and the receipt of the award by an individual employee has been recommended by the NEAC, the NIH deputy ethics counselor (or the designated agency ethics official in the case of an award to the NIH Director, the Director of the National Cancer Institute, or other political appointee) would review the recommendations and could approve the receipt of the award, if it is determined that acceptance of the award is not prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part. The approving official could determine that even where an award meets the above-described criteria, it is in the agency's interest to impose conditions on the employee's

acceptance of the award to ensure public confidence in the impartiality or objectivity of agency programs. Such conditions could include limiting the type, character, or amount of the award or incidents of the award and imposing a period of disqualification greater than the 12-month period described at § 5501.112.

Section 5501.111(d) provides that if an employee accepts an award without prior approval as required by this section, the employee may be required, in addition to any penalty provided by law and applicable regulations, to forfeit the award by returning it to the donor. If an employee accepts a prohibited award, the employee shall be required, in addition to any penalty provided by law and applicable regulations, to: reject the award and instruct the donor to strike the honoree's name from any list of award recipients; remove the recognition from the employee's résumé or curriculum vitae; return any tangible indicia of the recognition to the donor; and forfeit the award by returning it to the donor.

Section 5501.112 One-Year Disqualification of Employees of the National Institutes of Health From Certain Matters Involving an Award Donor

Section 5501.112 bars any employee who has, within the last year, accepted an award permitted under 5 CFR 2635.204(d) or § 5501.111 from participating in any particular matter involving specific parties in which the donor is or represents a party unless authorized to do so under 5 CFR 2635.502(d). This provision is necessary to protect the public's confidence in the agency's programs by ensuring that agency employees do not participate officially in specific party matters involving any person or entity that has in the recent past given an award to the employee.

B. Supplemental Financial Disclosure Regulations

New part 5502 reinstates an annual reporting requirement for employees with approved outside activities. Its primary purpose is to allow agency management to review an array of approved activities to ensure that employees have complied with applicable laws and regulations, and to ensure that an approved activity continues to meet the standard for approval. For example, where an employee's official duties have changed since an activity was originally approved, or where a company with which an employee has an outside activity has merged with, or been acquired by, another company that can be affected by the employee's official duties, the agency would need to reevaluate a previously approved activity. The annual reporting requirement is intended to facilitate that review and ensure that changed circumstances do not render a previously approved activity improper.

Prior to 1996, the Department, pursuant to 45 CFR 73.735–709, required employees to submit a report of outside activities on an HHS Form 521 by September 10 of each year with respect to the previous 12 months ending August 31. The HHS Standards of Conduct Regulations at 45 CFR part 73 were largely superseded by the OGE executive branch-wide rules on financial disclosure, 5 CFR part 2634, and employee conduct, 5 CFR part 2635. The OGE regulations permitted agencies to promulgate regulations that would supplement each part, pursuant to 5 CFR 2634.103 and 2635.105. However, at the time the HHS Supplemental Ethics Regulation was issued, the Department did not draft a supplemental provision to carry forward the annual outside activity reporting requirement. The submission of one outside activity request form, HHS Form 520, was considered sufficient to screen for conflicts and to educate the employee about potential ethical concerns. To meet paperwork reduction goals, the annual filing of an outside activity report was discontinued.

In the preamble discussion of the outside activity prior approval requirement in 5 CFR 5501.106(d), the Department stated as follows:

> The Department will continue to employ HHS Form 520 as both a prior approval request form and a record of the disposition by the approval official. * * * No provision is made in these regulations, however, for an annual reporting of outside activities submitted on HHS Form 521, as previously required by 45 CFR 73.735–709. That section elicited an annual written verification whether the work or activity described in the original request was actually performed and required the employee to specify the amount of time spent and whether the activity would continue unchanged. Because the HHS Form 520 contains a blank for specifying duration and any substantive change in the scope of the approved activity would constitute a new activity requiring submission of another HHS Form 520, the annual report appears to be unnecessarily duplicative. Moreover, the information requested would, in any event, form the basis of a responsible dialogue between employees and supervisors concerning workload allocation and the avoidance of conflicts. The minimal benefit to be derived from an annual report does not outweigh the considerable burden involved in collecting, tracking, and reviewing the forms. Accordingly, the requirement for filing an annual HHS Form 521 expires upon the effective date of this rule.

61 FR 39762 (July 30, 1996).

Developments, both technological and otherwise, since that time now tip the scale of burdens and benefits differently. Although the burden on both the agency and its employees remains significant, advances in computer software have reduced this concern considerably. Electronically fillable forms and document tracking programs facilitate the process to a degree not previously attainable. Given the nature of any cumulative list, it remains true that the HHS Form 521 annual report of outside activities may duplicate in certain respects the information collected in an employee's original request for prior approval on an HHS Form 520 or listed on a public (SF 278) or confidential (OGE Form 450) financial disclosure report. Moreover, because approval of an outside activity will be effective for only one year under new § 5501.106(d)(5), employees will be required to renew long term activities on an annual basis. Nevertheless, despite the potential for overlap in some cases, a number of compelling reasons support the decision to reinstate the HHS Form 521.

First, not all employees who perform approved outside activities are public or confidential report filers. For these non-filers, the annual report may provide the agency the only opportunity to verify whether and on what terms the employee actually undertook the activity for which approval was requested.

Second, after the HHS 521 was discontinued, the system relied on each employee to file a new approval request whenever a substantive change occurred in the employee's duties or the scope of the approved activity. This expectation may have been unrealistic, especially in light of recent allegations that a number of NIH employees may have failed to submit even initial approval forms for their outside consulting activities. Accordingly, enforcement of the ethics requirements would be improved considerably by placing an annual focus on outside activities where each employee would be individually notified of the outside activity rules, provided blank forms (or directed to an electronic version), and required to submit the necessary information by a date certain, and each supervisor would be engaged actively in the effort.

Third, in a rapidly changing economy, every opportunity to assist employees in screening for potential conflicts is valuable. Employees may have undertaken activities that were

approved based on information that subsequently changed in a material way and which may call into question the continuing appropriateness of the activity. For example, due to mergers, acquisitions, and changed business plans, companies not previously engaged in certain activities related to an employee's official duties may become engaged in such activities. Likewise, an employee's official duties change over time, potentially creating a conflict with an outside activity that did not previously exist at the time of the initial request.

Fourth, the information requested on, as well as the statistical data derived from, the annual report will assist the Department in meeting its obligation to evaluate periodically the adequacy and effectiveness of the agency's conduct regulations, financial disclosure systems, and enforcement efforts and to take prompt corrective action to remedy actual or potential conflict of interest situations. See 5 CFR 2638.203(b)(10) and (11).

Section 5502.101 General

Section 5502.101 explains that the regulations in part 5502 apply to all employees of the Department of Health and Human Services and supplement the Executive Branch Financial Disclosure Regulations contained in 5 CFR part 2634. Although the annual report of outside activities required by § 5502.102 excludes special Government employees from its coverage, the part as a whole is intended to apply to all employees, unless otherwise noted. The section is drafted in this manner to accommodate any subsequent supplemental financial disclosure requirements that may be promulgated.

In addition, any regulation in part 5502 that is made applicable to employees of an HHS component designated as a separate agency under § 5501.102(a) applies to employees in a division or region of the Office of the General Counsel that principally advises or represents that component.

Section 5502.102 Annual Supplemental Report of Outside Employment or Activities

Section 5502.102 requires that employees, other than special Government employees, must file an annual report on or before February 28 of each year with respect to all outside activities that were approved during the prior calendar year (including activities originally undertaken in prior years and reapproved in the preceding calendar year). The report also solicits information of employees who have actually performed an outside activity for which prior approval is required under part 5501, regardless of whether the employees actually obtained such approval.

Section 5502.103 Content of Supplemental Reports

Section 5502.103 specifies that, in addition to basic identifying information, the annual report must include: a list of all outside activities for which prior approval is required under part 5501 that were approved pursuant to 5 CFR 5501.106(d) or undertaken within the reporting period; a statement as to whether the anticipated work described in a previously approved activity request was actually performed for the person or organization named in the request; for each outside activity actually performed, the beginning date of the relationship, the date(s) personal services were provided, the total number of hours spent and leave used on the activity, and the ending date of the activity; for ongoing activities, a statement as to how long the activity is anticipated to continue; the type and amount of income and/or reimbursements actually received during the reporting period and the date paid, or which were not received during the reporting period and remain due; a statement as to whether any changes occurred or are anticipated with respect to information supplied in the original outside activity request; a description of any change in the nature, scope or subject matter of any approved activity; and a description of any change in the employee's job, duties, or responsibilities that occurred after the outside activity was approved.

5502.104 Confidentiality of Reports

Pursuant to § 107(a)(2) of the Ethics in Government Act, the reports filed pursuant to this part are confidential and any information required to be provided shall not be disclosed to the public. The OGE implementing regulations at 5 CFR 2634.901 specify that this requirement applies to supplemental financial information requested of individuals who file public financial disclosure reports, as well as the information supplied by confidential filers and non-filers. Section 2634.901(d) further states that the statute leaves no discretion on this issue with the agencies. These reports are covered under the OGE/GOVT–2 Government-wide executive branch Privacy Act system of records, as well as any applicable agency records system.

5502.105 Agency Procedures

Implementing procedures for the submission and review of any report filed under this part may be prescribed by the designated agency ethics official or, with the concurrence of the designated agency ethics official, any HHS component. These procedures may provide for an extension or several extensions of the due date for any report filed under this part, for good cause shown, totaling not more than 90 days.

5502.106 Supplemental Disclosure of Prohibited Financial Interests Applicable to Employees of the Food and Drug Administration and the National Institutes of Health

Section 5502.106 requires FDA and NIH employees to report prohibited financial interests, including those interests that are covered by an applicable exception, within 30 days of joining the agency, being reassigned from another part of HHS, or acquiring such interests, for example, through marriage, gift, or inheritance. New entrant public and confidential filers who report such interests on their initial SF 278 or OGE 450 financial disclosure forms are not required to submit an additional report under this section. Incumbent public and confidential filers and non-filers are subject to the 30-day reporting requirement whenever a triggering event occurs. Current NIH employees newly subject to this requirement initially will have 60 days from the effective date of the rule to file.

This section is intended to implement the prohibited financial interest provisions applicable to FDA and NIH employees in 5 CFR 5501.104(a), 5501.110(c), and 5501.110(d), by requiring immediate disclosure of these holdings. Absent such reports, prohibited financial interests involuntarily acquired by incumbent public and confidential filers or held by filers transferred from other components may not be identified until they are disclosed in the annual reporting cycles, after several months or a year or more has passed. The prohibited financial interests of non-filers would escape detection altogether, thus making the $15,000 cap on such holdings largely unenforceable. Prior to the issuance of the HHS Supplemental Ethics Regulation in 1996, the FDA required non-filers to certify that no prohibited financial interests above the *de minimis* amount were held. Since that time, non-filers sometimes have been in violation of the prohibited holdings regulation because they are not subject to a specific reporting requirement.

At the same time, the agency recognizes that employees, especially in the case of new entrant employees, need a 30-day period in which to investigate their financial holdings and determine which of their interests are prohibited by the agency. The need for such a 30-day period is implicit in the regulations at 5 CFR 2634.201 and 2634.903, which provide new entrant public or confidential filers 30 days in which to submit their financial disclosure reports.

III. Matters of Regulatory Procedure

Administrative Procedure Act

These amendments prescribe rules of agency management or personnel that are exempt under 5 U.S.C. 553(a)(2) from the requirement for notice and comment rulemaking. These amendments also prescribe rules of agency practice and procedure governing employee conduct that are exempt under 5 U.S.C. 553(b) from the requirement of public notice and comment prior to promulgation of a final rule. In addition, with respect to NIH employees newly subject to restrictions on outside activities, financial holdings, and awards, the persons subject thereto have been provided actual notice of the substance of the rule or a description of the subjects and issues involved. The steps taken that apprise these employees are recounted below.

The need for supplemental regulations to address NIH ethics issues was discussed in public hearings before the United States Senate, Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies on January 22, 2004. The NIH Director convened a Blue Ribbon Panel (BRP) in March 2004 and charged the panel to review the existing laws, regulations, policies, and procedures under which the NIH currently operates regarding: (1) Real and apparent financial conflicts of interest of NIH staff where compensation or financial benefit from outside sources is received, including consulting arrangements and outside awards; and (2) requirements and policies for the reporting of NIH staff's financial interests, including which interests are subject to public disclosure, and what portion of NIH staff file public disclosures. The BRP was directed to make recommendations for improving existing laws, regulations, policies, and procedures, as appropriate, to the Advisory Committee to the Director, NIH, for deliberation and final recommendations to the NIH Director.

NIH employees were invited to give testimony to the panel, and on March 12, 13 and April 1, 5, 2004, the BRP received such oral and written testimony. Also, an electronic forum was establish in March 2004 to collect input from intramural scientists for the BRP's consideration. In the end, over 300 NIH employees gave comments to the BRP from March to April, 2004.

The BRP presented its findings to the Advisory Committee to the Director at an open meeting on May 6, 2004. In addition, the BRP Co-Chairs presented the panel's findings to the United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, on May 12, 2004.

At the June 22, 2004, hearing of the Oversight and Investigations Subcommittee, the NIH Director announced his intention to seek supplemental ethics regulations in three areas: outside activities, prohibited financial holdings, and awards. These proposals were developed after intensive internal reviews of NIH's ethics rules and procedures, and based, in part, on recommendations from the BRP. Immediately following the hearing, on June 23, 2004, the NIH produced talking points summarizing the NIH Director's testimony which were circulated to the Directors of the 27 institutes and centers (ICs) that comprise the NIH and to the IC Deputy Ethics Counselors. The talking points equipped NIH leadership to answer inquiries from NIH employees regarding the proposed changes.

The ICs also took action to educate their employees about the proposed changes. On July 20, 2004, the National Cancer Institute, the largest IC, held an all-hands meeting where the Director of the NIH Ethics Office (NEO) presented the proposed changes and answered employees' questions. On July 28, 2004, the Clinical Center held a briefing for its management on the proposed changes where the NEO Director again led the discussion and answered questions.

Starting in early September 2004, the NIH Ethics Advisory Committee, the group established by the NIH Director in January 2004 to provide peer review of outside activity and award approval requests from certain NIH employees, began notifying employees that the proposed changes may affect their recently approved outside activities. The NEAC notification stated:

> As you know, the NIH is making changes in its ethics program. Some changes, such as the creation of the NIH Ethics Advisory Committee (NEAC), have already been made. Other changes have been proposed.
>
> In this interim period, the current rules still apply, and requests to conduct outside activities are being approved based on these rules. You should note that after the new rules are adopted and take effect, certain types of outside activities, which may currently be approved, may be limited, if not prohibited altogether. For example, in contrast to the current rules, the NIH is considering prohibiting consulting arrangements with grantees for all employees, and not permitting such arrangements with pharmaceuticals and biotechnology companies. Membership on corporate boards and scientific advisory boards may also be banned. Furthermore, compensation in the form of stock or stock options may well be prohibited.
>
> We are giving you this information for planning purposes only. If you receive permission to engage in an outside activity and to receive the corresponding compensation from that activity, you may, of course, proceed with that activity. However, be aware that the rules [with respect] to that activity may change in the near future and that you will be required to change or adapt your activity to those new rules. Please be assured we will do everything we can to keep you apprised of changes to policies and procedures as they occur during this interim period.

On September 24, 2004, the NIH Deputy Director sent an all-employee memorandum via e-mail to notify NIH employees of the agency's plan to seek in effect a one-year moratorium on consulting with pharmaceutical and biotechnology companies. The memorandum explained that this step was being taken to give the NIH "time to complete [its] review of specific cases, develop effective information systems to track outside activities, and develop more effective ethics training programs for staff before a final policy is put in place."

On November 29, 2004, the NIH Director held a town hall meeting for over 180 intramural scientists. At the meeting, the NIH Deputy Director gave an overview of the various steps that the NIH has taken to revise its ethics program, including a discussion of the proposed regulatory changes.

In addition to the above described steps taken by management to keep NIH employees apprised of the proposed changes to the ethics program, the NIH in March 2004 created a conflict of interest section on its homepage. Employees were notified that up-to-date information on the proposed changes to the ethics program would be posted periodically on the Web site. Among other informative documents, the NIH posted the BRP's report, the NIH Director's June 22 Subcommittee testimony, and the September 24 notification. Furthermore, the proposed changes received extensive and

continuous coverage in various daily newspapers and scientific trade and professional magazines and journals.

To the extent that these internal agency regulations governing employee conduct have an extra-agency impact, the Department of Health and Human Services, pursuant to 5 U.S.C. 553(b)(B), for good cause, finds that providing notice and utilizing public comment procedures prior to promulgation of this interim rule are unnecessary and contrary to the public interest. The issues involved in this rulemaking primarily affect Federal employees. Those external entities that may have an indirect interest in hiring Federal employees, having them own stock, or giving them monetary awards are affected marginally. The primary effect of the prohibitions contained in these regulations is to establish prophylactic rules that preclude certain outside activities, financial holdings, and gifts on a uniform basis where many would have been prohibited as well under a case-by-case determination process.

As noted previously, the ethics issues that have engendered these regulations have been described extensively in many fora. The deliberative process in developing this interim rule has already been informed by input from employees, agency management, and members of the public in hearings before the NIH Blue Ribbon Panel on Conflict of Interest Policies and in testimony before the Senate Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, and the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations. The public through press accounts and the employees through agency notice have been well aware that Federal regulation on these matters was impending, and an opportunity for their involvement has occurred. NIH employees for nearly a year have faced considerable uncertainty and may have deferred commitments pending the issuance of an anticipated rule. Addressing at this time the ethics issues at the National Institutes of Health is of paramount importance to ensure public confidence in the scientific and health research conducted and funded by that agency and to resolve immediately the uncertainty surrounding employee decisions in these matters. In sum, employing the notice and comment procedures is unnecessary and contrary to the public interest, in part, because equivalent actions have already been taken to inform and involve interested parties and further process would not contribute substantially to the development of the regulation when balanced against the harm that may result from further delay and uncertainty.

Pursuant to 5 U.S.C. 553(d)(3), the Department of Health and Human Services also has determined, for the reasons discussed, that good cause exists for dispensing with the requirement of a 30-day delayed effective date. Those NIH employees who will be required to terminate their existing outside activities or divest currently held financial interests are provided transitional periods within which to comply. Because the interim revisions predominately affect the NIH ethics program and are critically necessary to preserve the integrity of NIH programs and operations, a delay in the effective date would be contrary to the public interest.

The public interest is instead served by making additional restrictions on the outside activities, financial holdings, and awards of NIH employees effective immediately upon publication (with the exception of transitional grace periods). The integrity of NIH programs has been potentially called into question by public examples of employees' outside activities and other financial ties to industry and grantee institutions. The Department and NIH are committed to correcting these problems through more careful oversight and restrictions that will lessen the potential that real or apparent conflicts may arise from unanticipated or undetected relationships with external organizations. Given that commitment, and the importance of implementing the restrictions as promptly as possible, the best interests of the NIH, the employees, and the public will be served by the immediate effectiveness of this rule.

Those provisions that apply to allowable holdings of FDA employees or gifts received from Indian tribes or Alaska Native villages recognize exemptions or relieve restrictions under current law and thus are effective upon publication pursuant to 5 U.S.C. 553(d)(1). As to other provisions that clarify or update the existing supplemental regulation with respect to nomenclature, agency organization, or procedure, or that document longstanding or other authoritative interpretations, no useful purpose would be served by delaying the effective date for those changes.

Interested persons may submit written comments on this interim final rule. The Department of Health and Human Services will review all comments that are received on or before April 4, 2005, and consider any modifications to this interim rule that appear warranted before adopting a permanent final rule on this matter.

Regulatory Flexibility Act

The Department of Health and Human Services has determined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this rule will not have a significant economic impact on a substantial number of small entities because the rule prescribes personnel provisions that primarily affect HHS employees.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to these final rule amendments because they do not contain information collection requirements that are subject to approval by the Office of Management and Budget.

Congressional Review Act

The Department of Health and Human Services has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking is related to HHS personnel.

Executive Orders 12866 and 12988

Because this rule relates to HHS personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

List of Subjects

5 CFR Part 5501

Conflict of interests, Ethics, Executive branch standards of conduct, Financial interests, Government employees, Outside activities.

5 CFR Part 5502

Conflict of interests, Ethics, Government employees, Outside activities, Reporting and record keeping requirements.

Dated: January 25, 2005.

Edgar M. Swindell,

Designated Agency Ethics Official, Department of Health and Human Services.

Dated: January 26, 2005.

Wade F. Horn,

Acting Secretary, Department of Health and Human Services.

Approved: January 26, 2005.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

■ For the reasons discussed in the preamble, the Department of Health and Human Services, with the concurrence of the Office of Government Ethics, amends chapter XLV of title 5 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

CHAPTER XLV—DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 5501–SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. The authority citation for part 5501 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 25 U.S.C. 450i(f); 42 U.S.C. 216; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203, 2635.403, 2635.802, 2635.803.

■ 2. Amend § 5501.101 by revising paragraph (c)(2) to read as follows:

§ 5501.101 General.

* * * * *

(c) * * *

(2) *Significantly regulated organization* means an organization for which the sales of products regulated by the Food and Drug Administration (FDA) constitute ten percent or more of annual gross sales in the organization's previous fiscal year; where an organization does not have a record of sales of FDA-regulated products, it will be deemed to be significantly regulated if its operations are predominately in fields regulated by FDA, or if its research, development, or other business activities are reasonably expected to result in the development of products that are regulated by FDA.

■ 3. Amend § 5501.103 as follows:

■ A. Revise the first sentence of paragraph (a) introductory text to read as set forth below;

■ B. Revise paragraph (a)(3) to read as set forth below;

■ C. Remove paragraph (a)(7) and redesignate paragraph (a)(6) and (a)(7);

■ D. Add new paragraph (a)(6) to read as set forth below;

■ E. Remove paragraph (a)(11) and redesignate paragraphs (a)(12) and (a)(13) as paragraphs (a)(11) and (a)(12);

■ F. In paragraph (b)(2), remove the word "13" and add in its place the word "12";

■ G. Add new paragraph (c)(1)(iii) to read as set forth below.

The additions and revisions read as follows:

§ 5501.102 Designation of HHS components as separate agencies.

(a) *Separate agency components of HHS.* Pursuant to 5 CFR 2635.203(a), each of the twelve components of HHS listed below is designated as an agency separate from each of the other eleven listed components and, for employees of that component, as an agency distinct from the remainder of HHS. * * *

* * * * *

(3) Agency for Healthcare Research and Quality;

* * * * *

(6) Centers for Medicare and Medicaid Services;

* * * * *

(c) * * *

(1) * * *

(iii) The regulations at § 5501.111 governing the receipt of awards by employees of the National Institutes of Health; and

* * * * *

■ 4. Amend § 5501.103 by revising paragraph (a) to read as follows:

§ 5501.103 Gifts from federally recognized Indian tribes or Alaska Native villages or regional or village corporations.

(a) *Tribal or Alaska Native gifts.* In addition to the gifts which come within the exceptions set forth in 5 CFR 2635.204, and subject to all provisions of 5 CFR 2635.201 through 2635.205, an employee may accept unsolicited gifts of native artwork, crafts, or other items representative of traditional native culture from federally recognized Indian tribes or Alaska Native villages or regional or village corporations, provided that the aggregate market value of individual gifts received from any one tribe or village under the authority of this paragraph shall not exceed $200 in a calendar year.

* * * * *

■ 5. Amend § 5501.104 by revising the section heading, paragraphs (a), (b)(1), and (b)(2)(i), and designating the note following paragraph (b)(4) as note to paragraph (b) and revising it and adding new paragraph (c) to read as follows:

§ 5501.104 Prohibited financial interests applicable to employees of the Food and Drug Administration.

(a) *General prohibition.* Except as permitted by paragraph (b) of this section, no employee or spouse or minor child of an employee, other than a special Government employee or the spouse or minor child of a special Government employee, of the Food and Drug Administration shall have a financial interest in a significantly regulated organization.

(b) * * *

(1) An employee or spouse or minor child of an employee may have a financial interest, such as a pension or other employee benefit, arising from employment with a significantly regulated organization.

Note to paragraph (b)(1): FDA employees who file public or confidential financial disclosure reports pursuant to 5 CFR part 2634, as opposed to spouses and minor children of such employees, are generally prohibited under § 5501.106(c)(3) from engaging in current employment with a significantly regulated organization.

(2) * * *

(i) The total cost or value, measured at the time of acquisition, of the combined interests of the employee and the employee's spouse and minor children in the regulated organization is equal to or less than the *de minimis* exemption limit for matters involving parties established by 5 CFR 2640.202(a) or $15,000, whichever is greater (the phrase "time of acquisition" shall mean the date on which the employee actually acquired the financial interest—or on which the financial interest became imputed to the employee under 18 U.S.C. 208—whether by purchase, gift, bequest, marriage, or otherwise, except that with respect to a financial interest that was acquired prior to the employee's entrance on duty as an employee of the Food and Drug Administration, the "time of acquisition" shall be deemed to be the date on which the employee entered on duty);

* * * * *

Note to paragraph (b): With respect to any excepted financial interest, employees are reminded of their obligations under 5 CFR part 2635, and specifically their obligation under subpart D of part 5501 to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest arising from publicly traded securities that exceeds the *de minimis* thresholds specified in the regulatory exemption at 5 CFR 2640.202 or from non-publicly traded securities that are not covered by the regulatory exemption. Furthermore, the agency may prohibit or restrict an individual employee from acquiring or holding any financial interest or a class of financial interests based on the agency's determination that the interest creates a substantial conflict with the employee's duties, within the meaning of 5 CFR 2635.403.

(c) *Reporting and divestiture.* For purposes of determining the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under paragraph (a) of this section, the "date divestiture is first directed" means the date on which the new entrant public or confidential financial disclosure report required by part 2634 of this title or any report required by § 5502.106(c) of this chapter is due.

■ 6. Amend § 5501.106 as follows:

■ A. Revise paragraph (c)(3) heading and introductory text, paragraphs (c)(4)(i) introductory text and (d)(1) introductory text, and paragraphs (d)(2) heading,

(d)(2)(i), (d)(2)(iii), (d)(3), and (d)(4) to read as set forth below:

■ B. In the first sentence of the note following paragraph (d)(4), remove the duplicate second occurence of the words "granting of";

■ C. Redesignate paragraph (d)(5) as paragraph (d)(6) and add new paragraph (d)(5) to read as set forth below: and

■ D. Add new paragraph (e) to read as set forth below:

The revisions and additions read as follows:

§ 5501.106 Outside employment and other outside activities.

* * * * *

(c) * * *

(3) *Prohibited outside activities applicable to employees of the Food and Drug Administration.* An employee of the Food and Drug Administration who is required to file a public or confidential financial disclosure report pursuant to 5 CFR part 2634 shall not:

* * *

(4) * * *

(i) An employee who serves as an attorney in or under the supervision of the Office of the General Counsel or the Office of Counsel to the Inspector General shall not engage in any outside practice of law that might require the attorney to: * * *

* * * * *

(d) *Prior approval for outside employment and other outside activities*—(1) *General approval requirement.* Except to the extent that an employment or other activity has been exempted under paragraph (d)(6) of this section, an employee shall obtain written approval prior to engaging, with or without compensation, in the following outside employment or activities: * * *

(2) *Additional approval requirement for employees of the Food and Drug Administration and the National Institutes of Health.*

(i) In addition to the general approval requirements set forth in paragraph (d)(1) of this section, an employee of the Food and Drug Administration or the National Institutes of Health shall obtain written approval prior to engaging in any outside employment, as defined in 5 CFR 2635.603(a), whether or not for compensation, or any self-employed business activity.

* * * * *

(iii) The requirement of paragraph (d)(2)(i) of this section shall not apply to the extent that an employment activity has been exempted, pursuant to paragraph (d)(6) of this section.

(3) *Submission of requests for approval.* (i) An employee seeking to engage in any of the activities for which advance approval is required shall make a written request for approval a reasonable time before beginning the activity. This request shall be directed to the employee's supervisor. The supervisor shall submit the request and a statement addressing the extent to which the employee's duties are related to the proposed outside activity to an agency designee, who shall make a final determination with respect to the request.

(ii) All requests for prior approval shall include the following information:

(A) The employee's name, contact information, organizational location, occupational title, grade, step, salary, appointment type, and financial disclosure filing status;

(B) The nature of the proposed outside employment or other outside activity, including a full description of the specific duties or services to be performed;

(C) A description of the employee's official duties that relate to the proposed activity;

(D) A description of how the employee's official duties will affect the interests of the person for whom the proposed activity will be performed;

(E) The name and address of the person or organization for whom or with which the work or activity will be done, including the location where the services will be performed;

(F) The estimated total time that will be devoted to the activity. If the proposed outside activity is to be performed on a continuing basis, a statement of the estimated number of hours per year; for other employment, a statement of the anticipated beginning and ending date;

(G) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours and type of leave that will be required;

(H) The method or basis of any compensation to be received (*e.g.*, fee, per diem, honorarium, advance, royalties, stock, stock options, travel and expenses, or other form of remuneration tendered in cash or in-kind in connection with the proposed activity) from the person or organization for whom or with which the work or activity will be done;

(I) The amount of any compensation to be received from the person or organization for whom or with which the work or activity will be done;

(J) The amount and date of any compensation received, or due for services performed, within the six-year period immediately preceding the submission of the request for approval from the person or organization for whom or with which the work or activity will be done (including any amount received or due from an agent, affiliate, parent, subsidiary, or predecessor of the proposed payor);

(K) A statement as to whether the compensation is derived from an HHS grant, contract, cooperative agreement, or other source of HHS funding or attributed to services related to an activity funded by HHS, regardless of the specific source of the compensation;

(L) For activities involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, an HHS grant, contract, cooperative agreement, or other funding relationship;

(M) For activities involving teaching, speaking, or writing, a syllabus, outline, summary, synopsis, draft or similar description of the content and subject matter involved in the course, speech, or written product (including, if available, a copy of the text of any speech) and the proposed text of any disclaimer required by 5 CFR 2635.807(b)(2) or by the instructions or manual issuances authorized under paragraph (d)(6) of this section; and

(N) Such other relevant information that the designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102(a) determines is necessary or appropriate in order to evaluate whether a proposed activity is likely to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.

(4) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment or other outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part. * * *

* * * * *

(5) *Duration of approval.* Approval shall be effective for a period not to exceed one year from the date of approval. Upon a significant change in the nature of the outside activity or in the employee's official position or duties, the employee shall submit a revised request for approval using the procedure in paragraph (d)(3) of this section. If the outside activity is anticipated to exceed one year from the date of the most recent approval, the employee shall renew the request for approval no later than thirty days prior to the expiration of the period authorized.

(e) *Waivers.* The designated agency ethics official may grant a written waiver from any prohibited outside activity provision in this section or in § 5501.109 based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

■ 7. Add new § 5501.109 to read as follows:

§ 5501.109 Prohibited outside activities applicable to employees of the National Institutes of Health.

(a) *Applicability.* This section does not apply to special Government employees.

(b) *Definitions.* For purposes of this section:

(1) *Compensation* has the meaning set forth in 5 CFR 2635.807(a)(2)(iii).

(2) *Continuing professional education* means a course, a program, a series of courses or programs, or other educational activity provided to members of a profession, as defined in 5 CFR 2636.305(b)(1), or academic discipline and designed principally to maintain or advance the skills and competence of practitioners in a field of specialized knowledge and to expand an appreciation and understanding of the professional responsibilities, fiduciary obligations, or ethical aspirations incumbent upon members of the group. For those members of a profession or academic discipline that does not subject its members to licensure or continuing education requirements, the term continuing professional education includes those educational activities that exemplify a purpose and content similar to those offered to or required of members of a licensed profession.

(3) *Educational activity provider* means a supported research institution, a health care provider or insurer, or a related trade, professional, or similar association that offers accredited continuing professional education (or, in the case of a profession or academic discipline whose members are not subject to licensure and which does not have program accreditation requirements, an education program determined by the designated agency ethics official or his designee or, in consultation with the designated agency ethics official or his designee, the NIH Director or the NIH Director's designee to be substantially equivalent to an accredited continuing professional education program), but does not include a substantially affected organization.

(4) *Employment* has the meaning specified in 5 CFR 2635.603(a).

(5) *Health care provider or insurer* means a hospital, clinic, skilled nursing facility, rehabilitation facility, durable medical equipment supplier, home health agency, hospice program, health maintenance organization, managed care organization, or other provider of health care items and services as defined in sections 1877(h)(6) or 1903(w)(7) of the Social Security Act (42 U.S.C. 1395(h)(6) or 1396(w)(7)) and any entity organized and licensed as a risk-bearing entity eligible to offer health insurance or health benefits coverage.

(6) *Related trade, professional, or similar association* means a trade, professional, consumer, advocacy, or other organization, association, society, or similar group that is significantly involved in advancing the interests of persons or entities engaged in activities related to or affected by the health, scientific, or health care research conducted or funded by the NIH.

(7) *Scientific peer review* is the evaluation of scientific research findings for competence, significance, and originality by qualified experts who research and submit work for publication in the same field and which provides systematized accountability for adherence to ethical guidelines commonly accepted within the relevant research community for disseminating scientific information.

(8) *Substantially affected organization* means:

(i) A biotechnology or pharmaceutical company; a medical device manufacturer; or a corporation, partnership, or other enterprise or entity significantly involved, directly or through subsidiaries, in the research, development, or manufacture of biotechnological, biostatistical, pharmaceutical, or medical devices, equipment, preparations, treatments, or products;

(ii) Any organization a majority of whose members are described in paragraph (b)(8)(i) of this section; and

(iii) Any other organization determined by the designated agency ethics official or, in consultation with the designated agency ethics official, by the NIH Director or the NIH Director's designee that is substantially affected by the programs, policies, or operations of the NIH.

(9) *Supported research institution* means any educational institution or non-profit independent research institute that:

(i) Is, or within the last year has been, an applicant for or recipient of an NIH grant, cooperative agreement, or research and development contract;

(ii) Is, or within the last year has been, a proposer of or party to a cooperative research and development agreement (CRADA) with the NIH; or

(iii) Any organization a majority of whose members are described in paragraphs (b)(9)(i) or (ii) of this section.

(10) *Unrestricted educational grant* means funds received by or available to an educational activity provider from another source that are granted without stipulated conditions for their use other than the limitation that the funds shall be used to advance an educational program of the grant recipient. For purposes of this section, an educational grant shall not be considered unrestricted if the funding source for a continuing professional education program directly or indirectly:

(i) Selects or recommends the moderators, speakers, or presenters at the sponsored event;

(ii) Independently provides additional funding to the moderators, speakers, or presenters in connection with the educational activity;

(iii) Determines or recommends the audience composition;

(iv) Specifies or recommends the topics to be addressed, or

(v) Controls or recommends the planning, content, or implementation of the program in a manner inconsistent with guidelines established by a relevant professional association or accrediting organization that are designed to ensure that such activities are accurate, balanced, educational, free from commercial bias, nonpromotional, and independent of the influence of the funding source.

(11) *Unrestricted financial contribution* means funds received by or available to a publisher, academic press, editorial board, or other entity affiliated with or operated by a supported research institution, a health care provider or insurer, or a related trade, professional, or similar association from another source that are provided without stipulated conditions for their use other than the limitation that the funds shall be used to advance peer-reviewed writing or editing by the funds recipient. For purposes of this section, a financial contribution shall not be considered unrestricted if the funding source for peer-reviewed writing or editing directly or indirectly:

(i) Selects or recommends the author, reviewer, referee, or editor;

(ii) Independently provides additional funding to the author, reviewer, referee, or editor in connection with the writing or editing activity;

(iii) Determines or recommends the targeted audience of the writing or editing activity;

(iv) Specifies or recommends the topics to be addressed, or

(v) Controls or recommends the planning, content, or distribution of the written or edited product in a manner inconsistent with ethical guidelines commonly accepted within the relevant research community for disseminating scientific information which are designed to ensure that such writing or editing is accurate, unbiased, nonpromotional, transparent with respect to disclosure of potential conflicts, and independent of the influence of the funding source.

(c) *Prohibitions*—(1) *Prohibited outside activities with substantially affected organizations, supported research institutions, health care providers or insurers, and related trade, professional, or similar associations.* Except as permitted by paragraph (c)(3) of this section, an employee of the NIH shall not:

(i) Engage in employment with a substantially affected organization, a supported research institution, a health care provider or insurer, or a related trade, professional, or similar association;

(ii) Teach, speak, write, or edit for compensation for any substantially affected organization, supported research institution, health care provider or insurer, or related trade, professional, or similar association; or

(iii) Engage in any self-employed business activity that involves the sale or promotion of products or services of a substantially affected organization or a health care provider or insurer, except for the purpose of commercializing invention rights obtained by the employee pursuant to Executive Order 10096, 15 U.S.C. 3710d, or implementing regulations.

(2) *General exception.* Nothing in paragraph (c)(1) of this section prevents an employee from engaging in employment with, or teaching, speaking, writing, or editing for, a political, religious, social, fraternal, or recreational organization.

(3) *Specific exceptions.* Notwithstanding the prohibitions in paragraph (c)(1) of this section:

(i) *Teaching.* An employee may engage in and accept compensation for teaching a course requiring multiple presentations as permitted under 5 CFR 2635.807(a)(3).

(ii) *Clinical, medical, or health-related professional practice.* An employee may engage in and accept compensation for the outside practice of medicine, dentistry, pharmacy, nursing, or similar health-related professional practice that involves the personal provision of care, treatment, or other health-related professional services to or in connection with individual patients, provided that:

(A) The provision of health-related professional services to such individuals is not part of any ongoing research project conducted or funded by the NIH;

(B) The employee does not establish a private practice relationship with a current or recently discharged NIH patient or subject of an NIH-conducted or NIH-funded clinical trial or protocol;

(C) The employee does not personally refer private practice patients to the NIH; and

(D) The professional practice does not involve substantial unrelated non-professional duties, such as personnel management, contracting and purchasing responsibilities (other than "out-of-stock" requisitioning), and does not involve employment by a medical product manufacturer in the conduct of biomedical research.

(iii) *Clerical or similar services.* An employee may engage in and accept compensation for employment that is limited to clerical or similar services described in § 5501.106(c)(3)(ii)(B).

(iv) *Continuing professional education.* An employee may engage in and accept compensation for a teaching, speaking, writing, or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a continuing professional education program conducted by an educational activity provider. If a substantially affected organization provides financial support for a continuing professional education program conducted by an educational activity provider, this exception is inapplicable unless the substantially affected organization is involved only as the funding source for an unrestricted educational grant.

(v) *Authorship of writings subjected to scientific peer review or a substantially equivalent editorial review process.* An employee may engage in and accept compensation for a writing or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the resulting article, chapter, essay, report, text, or other writing is submitted to a publisher, academic press, editorial board, or other entity affiliated with or operated by a supported research institution, a health care provider or insurer, or a related trade, professional, or similar association for publication in a scientific journal, textbook, or similar publication that subjects manuscripts to scientific peer review or a substantially equivalent editorial review process. If a substantially affected organization funds the publishing activities of a supported research institution, a health care provider or insurer, or a related trade, professional, or similar association, this exception is inapplicable unless the substantially affected organization is involved only as an unrestricted financial contributor and exercises no editorial control.

(4) *Transitional grace period.* Provided that the activity is not otherwise prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part, and the employee has obtained prior written approval for the outside activity in accordance with the procedures in § 5501.106(d), an employee may continue to engage in outside activities that would otherwise be prohibited by paragraph (c)(1) of this section for a period not to exceed 30 days from the effective date of this rule. An employee may request additional time up to a maximum of 90 days from the effective date of this rule if:

(i) The outside activity had been reviewed by the NIH Ethics Advisory Committee (NEAC) and subsequently approved by the NIH deputy ethics counselor (DEC) (or, for those activities not within the jurisdiction of the NEAC, if the outside activity had been reviewed by the employee's supervisor and subsequently approved by the DEC for the employee's institute or center) during the period between January 1, 2004, and February 3, 2005, the effective date of this rule;

(ii) The employee submits a written request within 30 days of the effective date of this rule seeking authorization to continue the outside activity for such additional time as the employee requests (not to exceed the maximum 90-day grace period authorized by this section);

(iii) The employee demonstrates that additional time is necessary to allow the employee to conclude responsibly his outstanding obligations;

(iv) The NEAC (or, for those activities not within the jurisdiction of the NEAC, the employee's supervisor) finds that good cause exists for permitting an extended grace period beyond the initial 30 days authorized by this section and recommends to the NIH DEC (or the DEC for the employee's institute or center) that an extension be granted; and

(v) The NIH DEC, after consultation with the designated agency ethics official or his designee (or, for those activities not within the jurisdiction of the NEAC, the DEC for the employee's institute or center, after consultation with the NIH DEC or his designee), determines the length of the extension and grants the employee additional time to comply with the outside activity prohibitions in paragraph (c)(1) of this section.

(5) An employee who meets the criteria of paragraphs (c)(4)(i) and (ii) of this section may continue to engage in the outside activity pending the final resolution of the request, but in no event shall such activity continue beyond the 90-day grace period. If the extension request is denied, the employee shall cease the activity no later than five days after the employee receives notice of the denial.

■ 8. Add new § 5501.110 to read as follows:

§ 5501.110 Prohibited financial interests applicable to employees of the National Institutes of Health.

(a) *Applicability.* This section does not apply to special Government employees or the spouse or minor children of a special Government employee.

(b) *Definitions.* For purposes of this section:

(1) *Confidential filer* means an employee of the National Institutes of Health who meets the criteria in 5 CFR 2634.904 and who has not been excluded from the requirement of filing a confidential financial disclosure report under the procedures in 5 CFR 2634.905.

(2) *Public filer* means an employee of the National Institutes of Health who meets the criteria in 5 CFR 2634.202 and who has not been excluded from the requirement of filing a public financial disclosure report under the procedures in 5 CFR 2634.203.

(3) *Substantially affected organization* has the meaning set forth in § 5501.109(b)(8).

(4) *Time of acquisition* means the date on which the employee actually acquired the financial interest or on which the financial interest became imputed to the employee under 18 U.S.C. 208, whether by purchase, gift, bequest, marriage, or otherwise, except that with respect to a financial interest that was acquired prior to the employee's entrance on duty as an employee of the National Institutes of Health, the "time of acquisition" shall be deemed to be the date on which the employee entered on duty. For assets held as of the effective date of this section by employees on duty at the National Institutes of Health at such time, the "time of acquisition" will be deemed to be the effective date of this section.

(c) *Prohibition applicable to public and confidential filers.* Except as permitted by paragraph (e) of this section, an employee of the National Institutes of Health who is required to file a public or confidential financial disclosure report pursuant to 5 CFR part 2634 and the spouse or minor child of such public or confidential filer shall not have a financial interest in a substantially affected organization.

(d) *Prohibition applicable to non-filers and excluded positions.* Except as permitted by paragraph (e) of this section, an employee who is not required to file a public or confidential financial disclosure report pursuant to part 2634 of this title, or who is employed in a confidential filing position excluded from the prohibited holdings requirement pursuant to paragraph (f) of this section, or the spouse or minor child of such employee, shall not have a financial interest in a substantially affected organization unless:

(i) The total cost or value, measured at the time of acquisition, of the combined interests of the employee and the employee's spouse and minor children in the affected organization is equal to or less than the *de minimis* exemption limit for matters involving parties established by 5 CFR 2640.202(a) or $15,000, whichever is greater;

(ii) The holding, if it represents an equity interest, constitutes less than 1 percent of the total outstanding equity of the organization; and

(iii) The total holdings in substantially affected organizations account for less than 50 percent of the total value of the combined investment portfolios of the employee and the employee's spouse and minor children.

(e) *Exceptions for certain financial interests.* Notwithstanding the prohibitions in paragraphs (c) and (d) of this section:

(1) An employee or spouse or minor child of an employee may have a financial interest, such as a pension or other employee benefit, arising from employment with a substantially affected organization.

Note to paragraph (e)(1): NIH employees, as opposed to spouses and minor children of employees, are generally prohibited under § 5501.109 from engaging in current employment with a substantially affected organization.

(2) An employee or spouse or minor child of an employee may have an interest in a substantially affected organization that constitutes any interest in a publicly traded or publicly available investment fund (*e.g.*, a mutual fund), or a widely held pension or similar fund, which, in the literature it distributes to prospective and current investors or participants, does not indicate the objective or practice of concentrating its investments in substantially affected organizations, if the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(3) In cases involving exceptional circumstances, the NIH Director or the NIH Director's designee, with the approval of the designated agency ethics official or his designee, may grant a written exception to permit an employee, or the spouse or minor child of an employee, to hold a financial interest in a substantially affected organization based upon a determination that the application of the prohibitions in paragraphs (c) or (d) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which HHS programs are administered or to avoid a violation of part 2635 of this title.

(4) An employee may have a financial interest in connection with the development and commercialization of invention rights obtained by the employee pursuant to Executive Order 10096, 15 U.S.C. 3710d, or implementing regulations.

Note to paragraph (e): With respect to any excepted financial interest, employees are reminded of their obligations under 5 CFR part 2635, and specifically their obligation under subpart D to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest arising from publicly traded securities that exceeds the *de minimis* thresholds specified in the regulatory exemption at 5 CFR 2640.202 or from non-publicly traded securities that are not covered by the regulatory exemption. Furthermore, the agency may prohibit or restrict an individual employee from acquiring or holding any financial interest or a class of financial interests based on the agency's determination that the interest creates a substantial conflict with the employee's duties, within the meaning of 5 CFR 2635.403.

(f) *Exclusion of certain confidential filing positions from prohibited holdings requirement.* Any individual or class of individuals described in paragraph (b)(1) of this section may be excluded from the prohibited holdings requirement of paragraph (c) of this section when the designated agency ethics official, in consultation with the

NIH Director or the NIH Director's designee, determines that:

(1) The duties of the position make remote the possibility that a financial interest in a substantially affected organization would constitute a disqualifying financial interest under 18 U.S.C. 208;

(2) The application of the prohibition in paragraph (c) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which HHS programs are administered or to avoid a violation of part 2635 of this title; and

(3) The individual or class of individuals does not occupy any position described below:

(i) Any position in the Office of the Director that exercises broad, agency-wide influence or authority over NIH policies, programs, or operations;

(ii) Any position in the Office of the Director or in an NIH institute or center (IC) that is specifically responsible for negotiating agreements between NIH and any substantially affected organization;

(iii) Any position involved in extramural funding decisions for biomedical or behavioral research grants, contracts, or cooperative agreements;

(iv) Any position the duties and responsibilities of which permit the employee to exert broad influence over the direction of intramural science; or

(v) Any position in which the employee is engaged in research that involves a product or service of a substantially affected organization or that is likely to have a direct and predictable effect on the financial interests of a substantially affected organization.

(g) *Reporting and divestiture.* For purposes of determining the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under paragraphs (c) and (d) of this section, the "date divestiture is first directed" means the date on which the new entrant public or confidential financial disclosure report required by part 2634 of this title or any report required by § 5502.106(c) of this chapter is due.

■ 9. Add new § 5501.111 to read as follows:

§ 5501.111 Awards tendered to employees of the National Institutes of Health.

(a) *Applicability.* This section does not apply to special Government employees.

(b) *Additional limitations on awards to employees of the National Institutes of Health.* The following limitations shall apply to the acceptance by an employee of an award pursuant to 5 CFR 2635.204(d):

(1) *Limitations applicable to senior employees.*—(i) A senior employee shall not accept a gift with an aggregate market value of more than $200, or that is cash or an investment interest, that is an award or incident to an award given because of the employee's official position or from a prohibited source.

(ii) For purposes of this section, *senior employee* means the Director and the Deputy Director of the National Institutes of Health; members of the senior staff within the Office of the Director who report directly to the NIH Director; the Director, the Deputy Director, Scientific Director, and Clinical Director of each Institute and Center within NIH; Extramural Program Officials who report directly to an Institute or Center Director; and any employee of equivalent levels of responsibility who is designated as a senior employee by the designated agency ethics official or the NIH Director, in consultation with the designated agency ethics official.

(2) *Limitations applicable to employees with official responsibility for matters affecting an award donor.* An employee, other than a senior employee, shall not accept a gift with an aggregate market value of more than $200, or that is cash or an investment interest, that is an award or incident to an award from a person, organization, or other donor that:

(i) Is seeking official action from the employee, any subordinate of the employee, or any agency component or subcomponent under the employee's official responsibility;

(ii) Does business or seeks to do business with any agency component or subcomponent under the employee's official responsibility;

(iii) Conducts activities substantially affected by the programs, policies, or operations of any agency component or subcomponent under the employee's official responsibility; or

(iv) Is an organization a majority of whose members are described in paragraphs (b)(2)(i) through (iii) of this section.

(3) *Prior approval of awards.*—(i) No employee shall accept an award under 5 CFR 2635.204(d) or this section unless the receipt thereof has been approved in writing in advance in accordance with procedures specified by the designated agency ethics official, or with the concurrence of the designated agency ethics official, the NIH Director or the NIH Director's designee.

(ii) Approval shall be granted only upon a determination that acceptance of the award is not prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

Note to paragraph (b): In some circumstances cash and other things of value provided in connection with the provision of personal services, including speaking or writing, may be compensation, not a gift. Other ethics rules governing outside activities may restrict receipt of such compensation. See, for example, 5 CFR 2635.807.

(c) *Exception.* Notwithstanding the prohibition in paragraph (b) of this section, the NIH Director (or the Secretary, with respect to awards tendered to the NIH Director), with the approval of the designated agency ethics official, may grant a written exception to permit an employee to accept an award otherwise prohibited by this section under the following conditions:

(1) There is a determination by the NIH Director (or the Secretary, with respect to awards tendered to the NIH Director) that acceptance of the gift will further an agency interest because it confers an exceptionally high honor in the fields of medicine or scientific research. The following criteria will be considered in making such a determination:

(i) The identity of the awarding organization;

(ii) The longevity of the awards program;

(iii) The source of award funds;

(iv) The size of the monetary component of the award recognition;

(v) The identity and credentials of past award recipients;

(vi) The degree of publicity attendant to receipt of the award; and

(vii) The impact of the substantive contribution being recognized;

(2) Absent the prohibition in paragraph (b) of this section, the gift would be permitted under part 2635 of this title; and

(3) The designated agency ethics official shall have determined that the application of the prohibition in paragraph (b) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which NIH programs are administered or to avoid a violation of part 2635 of this title.

(d) *Disposition of improperly accepted awards*—(1) *Failure to obtain prior approval.* If an employee accepts an award for which approval is required under paragraph (b)(3) of this section without obtaining such approval, the employee may be required, in addition to any penalty provided by law and applicable regulations, to forfeit the award by returning it to the donor.

(2) *Receipt of prohibited award.* If an employee accepts an award prohibited

by paragraph (b) of this section, the employee shall be required, in addition to any penalty provided by law and applicable regulations, to:

(i) Reject the award and instruct the donor to strike the honoree's name from any list of award recipients;

(ii) Remove the recognition from the employee's résumé or curriculum vitae;

(iii) Return any tangible indicia of the recognition to the donor; and

(iv) Forfeit the award by returning it to the donor.

■ 10. Add new § 5501.112 to read as follows:

§ 5501.112 One-year disqualification of employees of the National Institutes of Health from certain matters involving an award donor.

An employee, other than a special Government employee, of the National Institutes of Health who has, within the last year, accepted an award permitted under 5 CFR 2635.204(d) or § 5501.111 shall not participate in any particular matter involving specific parties in which the donor is or represents a party unless authorized to do so under 5 CFR 2635.502(d).

PART 5502—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 11. Add new part 5502 to read as follows:

PART 5502—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103.

§ 5502.101 General.

The regulations in this part apply to employees of the Department of Health and Human Services and supplement the Executive Branch Financial Disclosure Regulations in 5 CFR part 2634. Any regulation in this part made applicable only to the employees of an HHS component designated as a separate agency under § 5501.102(a) of this chapter shall apply to the employees of that component as defined in § 5501.102(b)(1) of this chapter.

§ 5502.102 Annual supplemental report of outside employment or activities.

Any employee, other than a special Government employee, for whom an outside employment or activity has been approved, or who has participated in any outside employment or activity for which prior approval is required, under part 5501 of this chapter shall file on or before February 28 of each year a report concerning all such activities that were approved or undertaken in the previous calendar year. The annual report shall be filed with the employee's supervisor who shall review the form, in consultation with an agency ethics official, and determine whether the employee has complied with applicable laws and regulations and whether approval of any ongoing outside activity should be cancelled because the activity does not meet the standard in § 5501.106(d)(4) of this chapter.

§ 5502.103 Content of annual supplemental reports.

The annual supplemental report of outside employment or activities required by § 5502.102 shall include the following information:

(a) The employee's name, contact information, organizational location, occupational title, grade, step, salary, appointment type, and financial disclosure filing status;

(b) A list of all outside activities for which prior approval is required under part 5501 of this chapter that were approved pursuant to 5 CFR 5501.106(d) or undertaken within the reporting period. The report must identify the person or organization for whom or with which the employee was to perform the activity and the approval date;

(c) A statement as to whether the anticipated work described in a previously approved outside activity was actually performed for the person or organization named in the request for approval;

(d) For each outside activity actually performed, the beginning date of the relationship with the outside entity, the date(s) personal services were provided, the total number of hours spent and leave used on the activity within the reporting period, and the ending date;

(e) For each outside activity that remains ongoing at the time of filing the report, a statement as to how long the activity is anticipated to continue, the date on which prior approval expires, and whether a request for renewal of approval is anticipated;

(f) For each outside activity actually performed, the type and amount of any income and/or reimbursements actually received during the reporting period and the date paid;

(g) For each outside activity actually performed, the type and amount of any income and/or reimbursements earned during or attributable to the reporting period that were not in fact received during the reporting period and remain due;

(h) A statement as to whether any change has occurred or is anticipated with respect to information supplied in the original outside activity approval request;

(i) A description of any change in the nature, scope, or subject matter of any approved activity; and

(j) A description of any change in jobs or in the duties and responsibilities of the employee's position that occurred after the outside activity was approved.

§ 5502.104 Confidentiality of reports.

Each report filed under this part is confidential and shall not be disclosed to the public, except as provided under § 2634.604(b) of this title.

§ 5502.105 Agency procedures.

The designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102(a) of this chapter may prescribe procedures for the submission and review of each report filed under this part. These procedures may provide for filing extensions, for good cause shown, totaling not more than 90 days.

§ 5502.106 Supplemental disclosure of prohibited financial interests applicable to employees of the Food and Drug Administration and the National Institutes of Health.

(a) *Applicability.* This section does not apply to special Government employees.

(b) *Definitions.* For purposes of this section:

(1) *Confidential filer* means an employee who meets the criteria in 5 CFR 2634.904 and who has not been excluded from the requirement of filing a confidential financial disclosure report under the procedures in 5 CFR 2634.905.

(2) *Prohibited financial interest* means a financial interest prohibited by § 5501.104(a) or §§ 5501.110(c) and (d) of this chapter for FDA or NIH employees respectively, including those financial interests that are excepted

under §§ 5501.104(b) or 5501.110(e) or permitted under paragraphs (d)(i) through (d)(iii) of § 5501.110 of this chapter.

(3) *Public filer* means an employee who meets the criteria in 5 CFR 2634.202 and who has not been excluded from the requirement of filing a public financial disclosure report under the procedures in 5 CFR 2634.203.

(4) *Remainder of HHS* has the meaning set forth in § 5501.102(b)(2) of this chapter.

(5) *Separate agency component* has the meaning set forth in § 5501.102(a) of this chapter.

(c) *Report of prohibited financial interests.*—(1) *New entrant employees.* A new entrant employee, other than a public filer or a confidential filer, shall report in writing within 30 days after entering on duty with the FDA or the NIH any prohibited financial interest held upon commencement of employment with the agency.

(2) *Reassigned employees.* An employee of a separate agency component, other than the FDA or the NIH, or of the remainder of HHS who is reassigned to a position at the FDA or the NIH shall report in writing within 30 days of entering on duty with the FDA or the NIH any prohibited financial interest held on the effective date of the reassignment to the agency.

(3) *Incumbent employees.* An incumbent employee of the FDA or the NIH who acquires any prohibited financial interest shall report such interest in writing within 30 days after acquiring the financial interest. An employee on duty at the NIH who is subject to § 5501.110(c) of this chapter as of February 3, 2005, the effective date of this rule, shall report in writing within 60 days after the effective date any prohibited financial interest held on the effective date.

[FR Doc. 05–2029 Filed 2–1–05; 2:00 pm]
BILLING CODE 4150–03–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2005–4]

Contributions and Donations by Minors

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of rules to Congress.

SUMMARY: The Federal Election Commission is amending its rules regarding contributions and donations by individuals aged 17 years or younger ("Minors"). These final rules conform to the decision of the United States Supreme Court in *McConnell* v. *Federal Election Commission*. In *McConnell*, the Supreme Court held unconstitutional section 318 of the Bipartisan Campaign Reform Act of 2002, which prohibited Minors from contributing to candidates and from contributing or donating to political party committees. Accordingly, this final rule amends the Commission's regulations to reflect the Supreme Court's decision by removing the regulatory prohibitions on contributions by Minors to candidates, and on contributions and donations by Minors to political party committees. Additional information appears in the **SUPPLEMENTARY INFORMATION** section.

DATES: *Effective Date:* The effective date for the revisions to 11 CFR part 110 is March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Amy L. Rothstein, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 318 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (Mar. 27, 2002) ("BCRA"), amended the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the "Act"), to prohibit individuals aged 17 years or younger ("Minors") from contributing to candidates, and from contributing or donating to political party committees.[1] *See* 2 U.S.C. 441k. The Commission promulgated regulations to implement the new statutory prohibitions in late 2002. *See* Final Rules and Transmittal of Regulations to Congress, 67 FR 69928 (Nov. 19, 2002). The 2002 rules amended the regulations governing contributions by Minors previously found at 11 CFR 110.1 and redesignated the regulations as 11 CFR 110.19. The 2002 rules also made conforming amendments to 11 CFR 110.1, regarding contributions by persons other than multi-candidate political committees, and 11 CFR 110.5, regarding aggregate bi-annual contribution limits for individuals, to exclude from their scope contributions by Minors prohibited under new 11 CFR 110.19. *See* 11 CFR 110.1(a) and 11 CFR 110.5(a) (2002).

The United States Supreme Court held BCRA section 318 to be unconstitutional in *McConnell* v. *Federal Election Commission*, 540 U.S. 93 (2003) ("*McConnell*"). Accordingly, the Commission is amending its regulations at 11 CFR 110.19 to reflect the Supreme Court's decision by removing the prohibitions on contributions by Minors to candidates, and on contributions and donations by Minors to political party committees. This rulemaking also makes conforming amendments to 11 CFR 110.1, regarding contributions by persons other than multi-candidate political committees, and 11 CFR 110.5, regarding aggregate bi-annual contribution limits for individuals, to reflect that these regulations apply to contributions made by Minors.

The practical effect of these changes is to return the substance of the regulations to its pre-BCRA state, with a single exception. The Commission has amended the requirement that a Minor *exclusively* own or control the funds, goods, or services contributed. Further information appears in the Explanation and Justification, below.

These final rules are based on proposed rules that the Commission published for comment in the **Federal Register** in April 2004. *See* Notice of Proposed Rulemaking, 69 FR 18841 (Apr. 9, 2004) ("NPRM"). The comment period closed on May 10, 2004. The Commission received two comments in response to the NPRM.[2]

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on January 28, 2005.

Explanation and Justification

11 CFR 110.1—Contributions by Persons Other Than Multicandidate Political Committees (2 U.S.C. 441a(a)(1))

This rulemaking amends 11 CFR 110.1(a) by deleting the reference to 11 CFR 110.19. Section 110.1 concerns contributions to candidates and political party committees by persons other than multi-candidate political committees.

[1] Before BCRA, the Commission's regulations had addressed only *contributions*, not *donations*, by Minors. A *contribution* includes a gift, subscription, loan, advance, or deposit of money or anything of value by any person for the purpose of influencing any election for Federal office. *See, e.g.*, 11 CFR 100.52(a). A *donation* is a payment, gift, subscription, loan, advance, deposit or anything of value given to a person, other than a contribution. *See, e.g.*, 11 CFR 300.2(e).

[2] The Commission received written comments from The National Youth Rights Association and from the Oakland County (Michigan) Democratic Party.

After BCRA section 318 prohibited Minors from making contributions to candidates and political committees, the Commission amended 11 CFR 110.1(a) to exclude individuals prohibited from making contributions under 11 CFR 110.19 (*i.e.*, Minors). *See* 11 CFR 110.1(a) (2002).

The Commission is returning 11 CFR 110.1(a) to its pre-BCRA state because the statutory prohibition on contributions by Minors no longer exists. As revised, contributions by Minors are once again subject to the provisions of 11 CFR 110.1.

11 CFR 110.5—Aggregate Biennial Contributions Limitation for Individuals (2 U.S.C. 441a(a)(3))

This rulemaking amends 11 CFR 110.5(a) by deleting the reference to 11 CFR 110.19. Section 110.5 sets out aggregate biennial contribution limits for individuals. After BCRA section 318 prohibited Minors from making contributions to candidates and political committees, the Commission amended 11 CFR 110.5(a) to exclude individuals prohibited from making contributions under 11 CFR 110.19 (*i.e.*, Minors). *See* 11 CFR 110.5(a) (2002).

The Commission is returning 11 CFR 110.5(a) to its pre-BCRA state, because the statutory prohibition on contributions by Minors no longer exists. As revised, contributions by Minors are once again subject to the aggregate biennial limitations of 11 CFR 110.5.

11 CFR 110.19—Contributions by Minors

1. Deleted Paragraphs

Consistent with *McConnell*, § 110.19 is being revised by deleting the following paragraphs found in the former rule: Paragraph (a), which prohibited Minors from contributing to Federal candidates; paragraph (b), which prohibited Minors from contributing or donating to political party committees; and paragraph (c)(4), which prohibited Minors from making certain earmarked contributions. The following provisions in former 11 CFR 110.19 are also being deleted because they are no longer necessary: Paragraph (d), which specified that Minors may provide volunteer services to Federal candidates and political committees and paragraph (e), which defined the phrase "directly or indirectly establish, finance, maintain, or control."

2. Redesignated and Revised Paragraphs

The Supreme Court's decision in *McConnell* invalidated BCRA's prohibition on donations by Minors. Accordingly, the Commission is revising the heading of 11 CFR 110.19 by deleting the reference to donations by Minors.

Although it no longer regulates donations by Minors, revised 11 CFR 110.19 continues to regulate contributions by Minors. Specifically, revised 11 CFR 110.19 permits Minors to contribute to Federal candidates and political committees in an amount that does not exceed the contribution limits that apply to individuals generally, so long as three conditions are met. These conditions are virtually identical to those currently in 11 CFR 110.19(c)(1) through (c)(3), which themselves were taken from the Commission's pre-BCRA rule governing contributions by Minors.[3] *See* 11 CFR 110.1(i) (2001).

Accordingly, the Commission is redesignating former 11 CFR 110.19(c) as revised 11 CFR 110.19. It is redesignating former paragraph (c)(1) as revised 11 CFR 110.19(a); revising and redesignating former paragraph (c)(2) as revised 11 CFR 110.19(b); and redesignating former paragraph (c)(3) as revised 11 CFR 110.19(c). As redesignated, the conditions in revised 11 CFR 110.19 will apply to all contributions by Minors.

The Commission's regulations have imposed special conditions on contributions by Minors since 1977. *See* 11 CFR 110.1(i)(2) (1977). Historically, the regulations permitted Minors to contribute to any candidate or political committee, including political party committees, within the limits that applied to contributions by individuals generally, so long as (1) the Minor made the decision to contribute knowingly and voluntarily; (2) the Minor had exclusive ownership or control of the funds, goods or services contributed; and (3) the contribution was not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, and was not controlled in any other way by another individual. The purpose of the conditions was "to assure that minors are not conduits for contributions which should be attributed to others, *e.g.* parents, guardians or other adults." Advisory Opinion 1983–13.

[3] Consistent with the nomenclature of the pre-BCRA rule governing contributions by Minors, the Commission is substituting the term "the Minor"—defined as an individual who is 17 years old or younger—for "that individual" in the revised 11 CFR 110.19. Because the substitution occurs throughout the revised rule and is for the convenience of the reader, rather than substantive, this Explanation and Justification does not identify it separately each time it appears.

Revised 11 CFR 110.19(a)—Knowing and Voluntary

Revised paragraph (a) of 11 CFR 110.19 requires the decision to contribute to a Federal candidate or political committee to be made knowingly and voluntarily by the Minor. This condition is identical to the proposed rule in the NPRM and former 11 CFR 110.19(c)(1).

Consistent with the Supreme Court's decision in *McConnell* that Congress could not establish 18 years as the minimum age for making contributions and donations, in the NPRM the Commission invited comments on whether there was any age below which it should prohibit individuals from making contributions, "recognizing that those individuals lack the capacity to manage their finances and dispose of property and therefore could not knowingly and voluntarily contribute on their own behalf." 69 FR at 18842. Both of the commenters strongly recommended against establishing a minimum age for making contributions, unless the Commission were to establish an extremely low minimum age.

The Commission has decided not to establish a minimum age for the making of contributions. In rejecting BCRA's minimum age of 18 years in *McConnell*, the Supreme Court confirmed that Minors "enjoy the protection of the First Amendment," which includes the right to make political contributions. *McConnell*, 540 U.S. at 231. While there may be a lower minimum age that the Supreme Court would uphold, an inflexible rule would run the risk of not being able to accommodate cases involving Minors below that age who desire to exercise their First Amendment rights.

In the NPRM, the Commission also invited comments on whether it should establish a rebuttable presumption that individuals below a certain age cannot "knowingly and voluntarily" decide to make a contribution, or whether it should combine a categorical prohibition with a rebuttable presumption similar to the approach adopted by some jurisdictions with regard to the tort liability of children. One commenter rejected the analogy to tort law, arguing that the age at which a child should be held responsible for negligence is not a valid indicator of when a child can make a knowing decision to give away money. The other commenter embraced the analogy to tort law and recommended that the Commission establish a three-tiered approach, with any child below seven years of age rebuttably presumed not to have knowingly and voluntarily decided

to make a contribution; any child between seven and 14 years of age rebuttably presumed to have knowingly and voluntarily decided to make a contribution; and any child above the age of 14 years being treated as an adult.

The Commission considers the approach advocated by the commenter to be unnecessarily complicated and unwieldy. It also concludes that a rebuttable presumption is not a sufficiently flexible means of ensuring that contributions by others are not made in the names of Minors. Accordingly, the Commission has decided not to adopt any presumptions in the revised rule.

In light of the fact that the Commission is returning the "knowing and voluntary" standard in revised 11 CFR 110.19(a) to its pre-BCRA state, the Commission takes this opportunity to provide general guidance on the types of factors that it has considered in past enforcement actions to determine whether a Minor made a contribution "knowingly and voluntarily." The Commission emphasizes, however, that it determines the outcome of each enforcement action involving contributions by Minors in light of all relevant and available facts. In any given case, the Commission may consider factors in addition to those listed here, and need not consider all of the factors listed.

One factor that the Commission typically considers is the age of the Minor at the time the contribution was made. *See, e.g.*, MUR 4252, MUR 4254 and MUR 4255. The younger the Minor, the closer the Commission will scrutinize the contribution to determine whether the Minor knowingly and voluntarily decided to provide something of value "for the purpose of influencing" a federal election. 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52 (a contribution is "a gift, subscription, loan * * * advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office").

The Commission has also considered whether the value of the Minor's contribution, if attributed to an adult member of the Minor's immediate family (such as a parent, legal guardian, or sibling), would cause that family member to exceed the contribution limitations of the Act and Commission regulations. *See, e.g.*, MUR 4255. A contribution that would not put any adult family member over the legal limit is less likely to be a disguised contribution by an adult family member.

Another potential consideration is whether the Minor has a history of making routine financial decisions. Minors with a history of making routine decisions about their personal finances, such as how to earn money, how to manage and invest their money, and how to spend their money, may be more likely to make a knowing and voluntary decision to spend their money on political contributions than Minors without such a history.

Other potentially relevant factors include the Minor's history of donating funds and the source of the funds contributed. A Minor with a history of donating funds to social, political, or cultural groups or causes may be more likely to make a knowing and voluntary decision to contribute than would a Minor whose giving pattern does not demonstrate a personal and substantial interest in social, political or cultural issues. By the same token, a Minor who makes a contribution from funds that the Minor earned through, for example, an after-school job, may have a greater personal interest in how those funds are spent, and thus be more likely to make a knowing and voluntary decision to contribute, than would a Minor who makes a contribution from passive income that the Minor received from, for example, a family trust.

Revised 11 CFR 110.19(b)—Ownership or Control of the Funds Contributed

Revised paragraph (b) of 11 CFR 110.19 requires the funds, goods or services contributed to be owned or controlled by the Minor. As examples of the types of funds that could meet the requirement, the regulation lists income earned by the Minor, the proceeds from a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor's name.

Revised paragraph (b) is the same as the proposed rule in the NPRM and former 11 CFR 110.19(c)(2), with two exceptions. The first exception concerns the requirement in the proposed rule and former 11 CFR 110.19(c)(2) that the funds, goods or services contributed be owed or controlled "exclusively" by the Minor. NPRM, 69 FR at 18842; 11 CFR 110.19(c)(2) (2004). The revised rule continues to require a Minor to own or control the funds, goods or services contributed, but it no longer requires the Minor to exercise exclusive ownership or control.

In the NPRM, the Commission invited comments on whether the exclusivity requirement in former 11 CFR 110.19(c)(2) was permissible in light of the Supreme Court's decision in *McConnell*. The Commission asked whether it should maintain the exclusivity requirement, "considering that in many jurisdictions a minor may not be able, for example, to open a bank account without a parent's or guardian's signature or manage an investment account without adult direction[.]" NPRM, 69 FR at 18842.

The commenters opined that the exclusivity requirement was not narrowly tailored, and that it created a potential conflict with state laws governing a Minor's ability to control assets without parental consent. One commenter suggested that the Commission remove the word "exclusively" from the regulation. The other commenter suggested that the Commission amend the regulation to focus on whether a Minor has unlimited control over or access to the funds contributed, by prohibiting contributions from accounts over which the Minor has no control, such as accounts established under the Uniform Gifts to Minors Act and the Uniform Transfers to Minors Act, and by permitting contributions from accounts to which the Minor has complete access through checks issued in only the Minor's name or an ATM card issued to the Minor, even if a parent or legal guardian co-signed for the account.

The Commission is deleting the requirement that the ownership or control that a Minor must exercise over the funds, goods or services contributed be exclusive. The Supreme Court reaffirmed in *McConnell* that Minors have a constitutional right to make contributions to Federal candidates and political committees. Retaining the exclusivity requirement in 11 CFR 110.19 would run the risk of effectively precluding some Minors from making contributions from their personal financial accounts for no other reason than because the Minor maintains an account in a jurisdiction or in a financial institution that requires an adult co-signatory on such accounts. The exclusivity requirement could also disadvantage some Minors vis-à-vis their similarly situated peers merely on the basis of where the Minors happen to bank. That is not the Commission's intention.

Removing the exclusivity requirement will help to focus future inquiries on the substance of a Minor's contribution, rather than on the form of a Minor's bank account.[4] The Commission does not intend, however, for removal of the exclusivity requirement to signal a loosening of the standards for conduit contributions through Minors. To the contrary, conduit contributions through

[4] The Commission has long permitted adults to make contributions from joint accounts. *See* 11 CFR 110.1(k).

Minors remain a serious violation of both the Act and the Commission's regulations, which continue to prohibit contributions in the name of another. *See* 2 U.S.C. 441f; 11 CFR 110.4(b). Furthermore, revised 11 CFR 110.19(b) continues to require a Minor to own or control the funds, goods or services contributed, even if the Minor no longer need exercise exclusive ownership or control.

In addition, the remaining criteria in 11 CFR 110.19 have not changed. A contribution by a Minor continues to be permissible only if "the decision to contribute is made knowingly and voluntarily by the Minor," and "the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual."

The second way in which revised 11 CFR 110.19(b) differs from the proposed rule in the NPRM and former 11 CFR 110.19(c)(2) is in one of the examples. The proposed rule and former 11 CFR 110.19(c)(2) listed "a savings account opened and maintained exclusively in the Minor's name" as an example of the types of funds that could qualify under former 11 CFR 110.19(c)(2). 11 CFR 110.19(c)(2) (2004).

The Commission is making three changes to this example in revised 11 CFR 110.19(b), for purposes of conformity and clarification. First, the Commission is deleting the word "exclusively" from the example, in conformity with the change to the text of 11 CFR 110.19(b), as discussed above. Second, the Commission is inserting the words "funds withdrawn by the Minor from" before "a savings account" in the example. As originally worded, the example seemed to require a Minor to contribute his or her entire account, which was not the Commission's intent. Third, the Commission is substituting the term "financial account" for "savings account" in the example, in recognition of the different kinds of accounts that a Minor might maintain today with banks, credit unions, brokerage firms, and similar institutions.

Revised 11 CFR 110.19(c)—Gift Proceeds

Revised paragraph (c) in 11 CFR 110.19 provides that a permissible contribution "is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual." This requirement is identical to the proposed rule in the NPRM and former 11 CFR 110.19(c)(3).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that these rules apply only to individuals 17 years of age or younger. Such individuals are not small entities under 5 U.S.C. 601. Moreover, these rules remove existing restrictions in accordance with controlling Supreme Court precedent and do not impose any additional costs on contributors, candidates, or political committees.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

■ For the reasons set forth in the preamble, the Federal Election Commission is amending subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 1. Revise the authority citation for part 110 to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 36 U.S.C. 510.

■ 2. Amend § 110.1 by revising paragraph (a) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) *Scope.* This section applies to all contributions made by any person as defined in 11 CFR 110.10, except multicandidate political committees as defined in 11 CFR 100.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.20 and 11 CFR parts 114 and 115.

* * * * *

■ 3. Amend § 110.5 by revising paragraph (a) to read as follows:

§ 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.20 and 11 CFR part 115.

* * * * *

■ 4. Revise § 110.19 to read as follows:

§ 110.19 Contributions by minors.

An individual who is 17 years old or younger (a Minor) may make contributions to any candidate or political committee that in the aggregate do not exceed the limitations on contributions of 11 CFR 110.1 and 110.5, if—

(a) The decision to contribute is made knowingly and voluntarily by the Minor;

(b) The funds, goods, or services contributed are owned or controlled by the Minor, such as income earned by the Minor, the proceeds of a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

Dated: January 28, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–2003 Filed 2–2–05; 8:45 am]

BILLING CODE 6715–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AF12

Small Business Government Contracting Programs; Subcontracting

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; delay of effective date.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) delays the effective date of the final rule published in the **Federal Register** on December 20, 2004, which generally relates to evaluation of prime contractor's performance and authorized factors in source selection when placing orders against Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts, as corrected by the document published in the **Federal Register** on January 10, 2005, until March 14, 2005.

DATES: The final rule published on December 20, 2004 (69 FR 75820) has been classified as a major rule subject to congressional review. The effective date, which was corrected from December 20, 2004, to February 18, 2005 on January 10, 2005 (70 FR 1655), is further delayed to March 14, 2005 (60 days after the date on which Congress received the rule). However, at the conclusion of congressional review, if the effective date has been changed, SBA will publish a document in the **Federal**

Register to establish the actual effective date or to terminate the rule.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research, (202) 401–8150, or *dean.koppel@sba.gov*.

SUPPLEMENTARY INFORMATION: On December 20, 2004, SBA published in the **Federal Register** a final rule which, among other things, issued a list of factors for Federal agencies to consider in evaluating a prime contractor's performance and good faith efforts to achieve the requirements in its subcontracting plan, and authorized the use of goals in subcontracting plans, and/or past performance in meeting such goals, as a factor in source selection when placing orders against Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts (69 FR 75820). The document incorrectly stated that the final rule was effective on December 20, 2004. The document did not put the public on notice that the final rule had been designated as a major rule under the Congressional Review Act (CRA), which generally requires that the effective date for major final rules to be at least 60 days from the date of publication in the **Federal Register**, or from the date both Houses of Congress receive it, whichever is later.

On January 10, 2005, SBA published in the **Federal Register** a correction to the final rule to put the public on notice that the final rule had been designated as a major rule under the CRA (70 FR 1655). The correction also stated that the effective date for the final rule was February 18, 2005, which was 60 days after the publication of the final rule in the **Federal Register**. When SBA published the correction, the Agency assumed that Congress had received the final rule before its publication in the **Federal Register**. However, Congress received the final rule on January 11, 2005. Because the CRA requires the effective date for major final rules to be at least 60 days after publication or congressional receipt, whichever is later, and because congressional receipt was the later of the dates, SBA is delaying the effective date of the final rule until March 14, 2005.

Dated: January 25, 2005.

Allegra F. McCullough,

Associate Deputy Administrator for Government Contracting and Business Development.

[FR Doc. 05–1777 Filed 2–2–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 012705C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Inseason action; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

DATES: Effective 6 a.m., local time, February 1, 2005, through March 31, 2005, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter; telephone: 727–570–5305; fax: 727–570–5583; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on August 2, 2000 (65 FR 41015, July 3, 2000), NMFS implemented a commercial quota of 3.87 million lb (1.76 million kg) for the Atlantic migratory group of Spanish mackerel. For the southern zone, NMFS specified an adjusted quota of 3.62 million lb (1.64 million kg) calculated to allow continued harvest at a set rate for the remainder of the fishing year in accordance with 50 CFR 622.44(b)(2). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic group Spanish mackerel from the southern zone is taken until 100 percent of the adjusted quota is taken, Spanish mackerel in or from the EEZ in the southern zone may be possessed on board or landed from a permitted vessel in amounts not exceeding 1,500 lb (680 kg) per day. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic group Spanish mackerel from the southern zone has been taken. Accordingly, the 1,500 lb (680 kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, February 1, 2005, through March 31, 2005, unless changed by further notification in the **Federal Register**.

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 prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30–day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: January 31, 2005.

John H. Dunnigan,

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

[FR Doc. 05–2057 Filed 1–31–05; 12:16 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 22
Thursday, February 3, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chap. I

[Docket No. 05–01]

FEDERAL RESERVE SYSTEM

12 CFR Chap. II

[Docket No. OP–1220]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chap. III

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chap. V

[No. 2005–02]

Request for Burden Reduction Recommendations; Money Laundering, Safety and Soundness, and Securities Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The OCC, Board, FDIC, and OTS ("we" or "the Agencies") are reviewing our regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Today, we request your comments and suggestions on ways to reduce burden in rules we have categorized as Money Laundering, Safety and Soundness, and Securities. All comments are welcome. We specifically invite comment on the following issues: Whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; whether the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small institutions, is justified; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

We will analyze the comments received and propose burden-reducing changes to our regulations where appropriate. Some of your suggestions for burden reduction might require legislative changes. Where legislative changes would be required, we will consider your suggestions in recommending appropriate changes to Congress.

DATES: Written comments must be received no later than May 4, 2005.

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

EGRPRA Web site: http://www.EGRPRA.gov.

• Comments submitted at the Agencies' joint Web site will automatically be distributed to all the Agencies. Comments received at the EGRPRA Web site and by other means will be posted on the Web site to the extent possible.

Individual agency addresses: You are also welcome to submit comments to the Agencies at the following contact points (due to delays in paper mail delivery in the Washington area, commenters may prefer to submit their comments by alternative means):

OCC: You may submit comments, identified by [docket 05–01], by any of the following methods:

• *E-mail: regs.comments@occ.treas.gov.* Include [docket 05–01] in the subject line of the message.

• *Fax:* (202) 874–4448.

• *Mail:* Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 1–5, Washington, DC 20219; Attention: Docket ##.

Public Inspection: You may inspect and photocopy comments at the Public Information Room. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, identified by Docket Number OP–1220, by any of the following methods:

• *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

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

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

FDIC: You may submit comments, identified as EGRPRA burden reduction comments, by any of the following methods:

• *http://www.fdic.gov/regulations/laws/federal/propose.html.*

• *E-mail: comments@fdic.gov.* Include "EGRPRA burden reduction comment" in the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: You may inspect comments at the FDIC Public Information Center, Room 100, 801 17th Street, NW., between 9 a.m. and 4:30 p.m. on business days.

OTS: You may submit comments, identified by "No. 2005–02." by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: regs.comments@ots.treas.gov.* Include "No. 2005–02" in the subject line of the message, and provide your name and telephone number.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery:* Comments may be hand delivered to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office.

Public Inspection: OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a fax to (202) 906–7755. (Please identify the material you would like to inspect to assist us in serving you.) OTS schedules appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date OTS receives a request.

FOR FURTHER INFORMATION CONTACT:

OCC:

- *Stuart Feldstein,* Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.
- *Heidi Thomas,* Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.
- *Lee Walzer,* Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

Board:

- *Patricia A. Robinson,* Managing Senior Counsel, Legal Division, (202) 452–3005.
- *Michael J. O'Rourke,* Counsel, Legal Division, (202) 452–3288.
- *John C. Wood,* Counsel, Division of Consumer and Community Affairs, (202) 452–2412.
- *Kevin H. Wilson,* Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2362.
- For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC:

- *Claude A. Rollin,* Special Assistant to the Vice Chairman, (202) 898–8741.
- *Steven D. Fritts,* Associate Director, Division of Supervision and Consumer Protection, (202) 898–3723.
- *Ruth R. Amberg,* Senior Counsel, Legal Division, (202) 898–3736.
- *Thomas Nixon,* Counsel, Legal Division, (202) 898–8766.

OTS:

- *Glenn Gimble,* Senior Project Manager, Thrift Policy, Supervision Policy, (202) 906–7158.
- *Josephine Battle,* Program Analyst, Thrift Policy, Supervision Policy, (202) 906–6870.
- *Karen Osterloh,* Special Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6639.

SUPPLEMENTARY INFORMATION:

I. Overview of the EGRPRA Review and the Steps Taken so Far

The Agencies [1] are asking for your comments and suggestions on ways in which we can reduce regulatory burdens consistent with our statutory obligations. Today, we request your input to help us identify which regulatory requirements in three categories—Money Laundering, Safety and Soundness, and Securities—are outdated, unnecessary, or unduly burdensome. We list the rules in these categories in a chart at the end of this notice. Please send us your recommendations at our Web site, *http://www.EGRPRA.gov,* or to one of the listed addresses.

Today's request for comment is the fourth notice in our multi-year review of regulations for burden reduction required by section 2222 of EGRPRA.[2] We described the EGRPRA review's requirements in our first EGRPRA notice. In summary, EGRPRA requires us to:

- Categorize our regulations by type.
- Publish the regulations by category to request comments on which regulations contain requirements that are: outdated, unnecessary, or unduly burdensome.
- Publish a summary of those comments.
- Eliminate unnecessary regulations to the extent appropriate.
- Report to Congress: summarizing the significant issues raised and their relative merits, and analyzing whether legislative change is required to reduce burden.

The first publication cycle must be complete by September 2006.

We have identified 13 categories of rules to implement our EGRPRA review. The categories are: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection: Lending Related Rules; Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. You may see the categories and the rules placed within them at our Web site, *http://www.EGRPRA.gov.*

We previously requested public comment about possible burden reduction in five categories of rules. Our June 16, 2003, notice requested comment on three categories: Applications and Reporting, Powers and Activities, and International Operations. Our January 21, 2004, notice requested comment on Consumer Protection: Lending Related Rules. Our July 20, 2004, notice requested comment on Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules. Today, we request comment on rules related to Money Laundering, Safety and Soundness, and Securities.

We plan to continue to publish one or more categories of rules approximately every six months between 2003 and 2006 and provide a 90-day comment period for each publication. As noted earlier, we must publish all our covered categories of rules for comment and review them by the end of September 2006.

In addition to soliciting written comments, we held banker outreach meetings in Orlando, St. Louis, Denver, San Francisco, New York City, Nashville, Seattle, and Chicago to hear directly from the industry about ways the Agencies could reduce regulatory burden. More than 400 representatives from the industry have attended the outreach meetings. The Agencies have also held three outreach meetings with over 100 participants for representatives of consumer and community groups to obtain their input on regulatory burden reduction. The consumer meetings were held in Arlington, Virginia; San Francisco; and Chicago. These meetings have helped focus our regulatory burden reduction efforts. We anticipate holding

---

[1] The National Credit Union Administration has participated in planning the EGRPRA review but has issued, and will issue, requests for comment separately.

[2] Public Law 104–208, Sept. 30, 1996, 12 U.S.C. 3311. We published our first notice in the **Federal Register** on June 16, 2003, at 68 FR 35589; our second notice on January 21, 2004, at 69 FR 2852; and our third notice on July 20, 2004, at 69 FR 43347. You may view the notices at our Web site, *http://www.EGRPRA.gov.*

additional outreach events this year. You may learn more about the meetings and related recommendations at our EGRPRA Web site, *http://www.EGRPRA.gov.*

We received 19 comments in response to the first notice, about 560 to the second notice, and over 100 to the third notice. The Agencies appreciate the response to our notices and the outreach meetings. The written comments and remarks at the meetings came from individuals, banks, savings associations, holding companies, industry trade groups, and consumer and community groups. You may view the comments at our EGRPRA Web site, *http://www.EGRPRA.* We are actively reviewing the feedback received about specific ways to reduce regulatory burden, as well as conducting our own analyses.

In addition, Congress considered various legislative proposals to reduce burden on the financial services industry in 2004. Representatives of the Agencies and industry leaders testified before congressional committees about these legislative reform proposals and other ideas for reducing burden on the financial services industry.[3] We will continue to post information about legislative and regulatory reform efforts on our Web site.

II. Request for Comment on Money Laundering, Safety and Soundness, and Securities Rules

Today, we are asking the public to identify ways in which the rules related to Money Laundering, Safety and Soundness, and Securities may be outdated, unnecessary, or unduly burdensome. As shown on the chart at the end of this notice, there are 28 regulations in these categories. The Agencies note that other non-banking agencies, such as the Department of Treasury under the Bank Secrecy Act, have issued rules within these three categories that apply to our regulated institutions. Some of the rules of these other agencies are beyond our jurisdiction. However, to the extent that we receive comments raising significant issues about these related rules, we will identify the issues in our Report to Congress and make those comments available to the appropriate agencies.

We encourage comments that address not only individual rules or requirements but also pertain to certain product lines. For example, in the case of an institution's securities activities, are any of the reporting, recordkeeping or other requirements of one regulation inconsistent with or duplicative of the requirements under another regulation? A product line approach is consistent with EGRPRA's focus on how rules interact, and may be especially helpful in exposing redundant or potentially inconsistent regulatory requirements. We recognize that commenters using a product line approach may want to make recommendations about rules that are not in our current request for comment. They should do so since we designed the EGRPRA categories to stimulate creative approaches rather than limiting them.

Specific issues to consider. While all comments are welcome, we specifically invite comment on the following issues:

A. Need for Statutory Change. (1) Do any statutory requirements underlying the rules impose unnecessary, redundant, conflicting or unduly burdensome requirements? (2) Are there less burdensome alternatives?

B. Need and Purpose of the Regulations. (1) Are the regulations consistent with the purposes of the statutes that they implement? (2) Have circumstances changed so that a rule is no longer necessary? (3) Do changes in the financial products and services offered to consumers suggest a need to revise certain regulations (or statutes)? (4) Do any of the regulations impose compliance burdens not required by the statutes they implement?

C. General Approach/Flexibility. (1) Would a different general approach to regulating achieve statutory goals with less burden? (2) Do any of these rules impose unnecessarily inflexible requirements?

D. Effect of the Regulations on Competition. Do any of the regulations or statutes create competitive disadvantages for insured depository institutions compared to the rest of the financial services industry or competitive disadvantages for one type of insured depository institution over another?

E. Reporting, Recordkeeping, and Disclosure Requirements. (1) Which reporting, recordkeeping, or disclosure requirements impose the most compliance burdens? (2) Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?

F. Consistency and Redundancy. (1) Are any of the requirements under one regulation inconsistent with or duplicative of requirements under another regulation? (2) If so, are the inconsistencies not warranted by the purposes of the regulations?

G. Clarity. Are any of the regulations drafted unclearly?

H. Burden on Small Insured Institutions. We have particular interest in minimizing burden on small insured institutions (those with assets of $150 million or less). Are there appropriate ways to amend these rules to minimize adverse economic impact on small insured institutions?

The Agencies appreciate the efforts of all interested parties to help us eliminate outdated, unnecessary, or unduly burdensome regulatory requirements.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

[3] On May 12, 2004, FDIC Vice Chairman John M. Reich testified about burden reduction before the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Financial Services. On June 22, agency and industry leaders testified about regulatory reform before the Senate Committee on Banking, Housing and Urban Affairs. Agency leaders included: Federal Reserve Board Governor Donald Kohn, FDIC Vice Chairman John M. Reich, NCUA Chairman JoAnn Johnson, OCC First Senior Deputy Comptroller and Chief Counsel Julie L. Williams, and OTS Chief Counsel John E. Bowman. On August 27, Senator Mike Crapo, who is leading a financial services regulatory reform effort for the Senate Banking Committee, released a matrix detailing more than 130 burden reduction proposals that were made in the June 2004 hearing.

Rules for which we are requesting comment now: Money Laundering, Safety and Soundness, and Securities

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[4] --- Thrift
Money Laundering					
Interagency Regulations					
Bank Secrecy Act Compliance	12 CFR Part 21, Subpart C	12 CFR 208.63 [Reg. H]	12 CFR Part 326, Subpart B	12 CFR 563.177	
Reports of Crimes or Suspected Crimes	12 CFR Part 21, Subpart B	12 CFR 208.62 [Reg. H]	12 CFR Part 353	12 CFR 563.180(d)	12 CFR 225.4(f) ---
Safety and Soundness					
Interagency Regulations					
Appraisal Standards for Federally Related Transactions	12 CFR Part 34, Subpart C	12 CFR 208.50 [Reg. H]; 12 CFR Part 225, Subpart G [Reg. Y]	12 CFR Part 323	12 CFR Part 564	12 CFR Part 225, Subpart G [Reg. Y] ---
Frequency of Safety and Soundness Examination	12 CFR 4.6-.7	12 CFR 208.64	12 CFR 337.12	12 CFR 563.171; See also 12 CFR 563.170	
Lending Limits	12 CFR Part 32			12 CFR 560.93	
Real Estate Lending Standards	12 CFR Part 34, Subpart D	12 CFR Part 208, Subpart E and App. C [Reg. H]	12 CFR Part 365	12 CFR 560.100; 12 CFR 563.101	
Security Devices and Procedures	12 CFR Part 21, Subpart A	12 CFR 208.61 [Reg. H]	12 CFR Part 326, Subpart A	12 CFR Part 568	

[4] Foreign banking organizations that conduct banking operations in the U.S., either directly through branches and agencies or indirectly through U.S. bank subsidiaries or commercial lending company subsidiaries, generally are subject to the same regulatory regime as domestic bank holding companies.

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[4] --- Thrift
Safety and Soundness (continued)					
Interagency Regulations (continued)					
Standards for Safety and Soundness	12 CFR Part 30	12 CFR Part 208, App. D-1 [Reg. H]	12 CFR Part 364	12 CFR Part 570	
Transactions with Affiliates	12 CFR Part 223 [Reg. W]; 12 CFR Part 31	12 CFR Part 223 [Reg. W]		12 CFR 563.41	
OCC Regulations					
Other Real Estate Owned	12 CFR Part 34, Subpart E				
Board Regulations					
Extensions of Credit by Federal Reserve Banks	12 CFR Part 201 [Reg. A]	12 CFR Part 201 [Reg. A]	12 CFR Part 201 [Reg. A]	12 CFR Part 201 [Reg. A]	
Limitations on Interbank Liabilities	12 CFR Part 206 [Reg. F]	12 CFR Part 206 [Reg. F]	12 CFR Part 206 [Reg. F]	12 CFR Part 206 [Reg. F]	
FDIC Regulations					
Annual Independent Audits and Reporting Requirements	12 CFR Part 363	12 CFR Part 363	12 CFR Part 363	12 CFR Part 363; See also OTS: 12 CFR 562.4	
Unsafe and Unsound Banking Practices (Standby Letters of Credit and Brokered Deposits)			12 CFR 337.2; 12 CFR 337.6		
OTS Regulations					
Audits of Savings Associations and Savings Association Holding Companies				12 CFR 562.4; See also FDIC: 12 CFR Part 363	--- 12 CFR 562.4
Financial Management Policies				12 CFR Part 563, Subpart F	--- 12 CFR 563.170

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[4] --- Thrift
Safety and Soundness (continued)					
OTS Regulations (continued)					
Lending and Investment – Additional Safety and Soundness Limitations				12 CFR Part 560	
Securities					
Interagency Regulations					
Banks as Registered Clearing Agencies	12 CFR 19.135	12 CFR 208.32-33 [Reg. H]	12 CFR Part 308, Subpart S		
Banks as Securities Transfer Agents	12 CFR 9.20	12 CFR 208.31 [Reg. H]	12 CFR Part 341		
Government Securities Sales Practices	12 CFR Part 13	12 CFR 208.37 [Reg. H]	12 CFR Part 368		
Recordkeeping and Confirmation of Securities Transactions Effected by Banks	12 CFR Part 12	12 CFR 208.34 [Reg. H]	12 CFR Part 344	12 CFR Part 551	
Reporting Requirements for Reported Securities Under the Securities Exchange Act of 1934	12 CFR Part 11	12 CFR 208.36 [Reg. H]	12 CFR Part 335	12 CFR Part 563d	
Securities Offerings	12 CFR Part 16			12 CFR Part 563g	
OCC Regulations					
Municipal Securities Dealer Activities of Banks	12 CFR Part 10				
Board Regulations					
Credit by Banks and Persons Other than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U]	12 CFR Part 221 [Reg. U] --- 12 CFR Part 221 [Reg. U]

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[4] --- Thrift
Securities (continued)					
OTS Regulations					
Accounting Requirements/Financial Statements				12 CFR Part 563c	
Proxies				12 CFR Part 569	
Rules on the Issuance and Sale of Institution Securities				12 CFR 563.5; 12 CFR Part 563, Subpart C	

Dated: January 13, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System on January 26, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of January, 2005.

Robert E. Feldman,

Executive Secretary.

Dated: January 25, 2005.

James E. Gilleran,

Director, Office of Thrift Supervision.

[FR Doc. 05–2079 Filed 2–2–05; 8:45 am]

BILLING CODE 4810–33–C; 6210–01–C; 6714–01–C; 6720–01–C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AC15

Investment of Customer Funds and Record of Investments

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend its regulations regarding investment of customer funds and related recordkeeping requirements. The proposed amendments address standards for investing in instruments with embedded derivatives, requirements for adjustable rate securities (including auction rate securities), concentration limits on reverse repurchase agreements ("reverse repos"), transactions by futures commission merchants ("FCMs") that are also registered as securities broker-dealers ("FCM/BDs"), rating standards and registration requirement for money market mutual funds ("MMMFs"), auditability standard for investment records, and certain technical changes. Among those technical changes is an amendment to the Commission's recordkeeping rules in connection with repurchase agreements ("repos") and proposed transactions by FCM/BDs.

DATES: Comments must be received on or before March 7, 2005.

ADDRESSES: Comments on the proposed amendments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, by e-mail to *secretary@cftc.gov*, or electronically by accessing *http://www.regulations.gov*. Reference should be made to "Proposed Amendments to Rule 1.25."

FOR FURTHER INFORMATION CONTACT: Phyllis P. Dietz, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5430.

Table of Contents

C. Costs and Benefits of the Proposed Rules
Text of Rules

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 1.25 (17 CFR 1.25) sets forth the types of instruments in which FCMs and derivatives clearing organizations ("DCOs") are permitted to invest customer assets that are required to be segregated under the Commodity Exchange Act[1] ("Act"). The Commission believes that it is important to have customer funds invested in a manner that minimizes their exposure to credit, liquidity, and market risks not only because they are customer assets, but also because, to the extent they represent a performance bond against customer obligations under derivatives contracts, these assets must be capable of being quickly converted to cash at a predictable value to minimize systemic risk.

Rule 1.25 was substantially amended in December 2000 to expand the list of permitted investments beyond the Treasury and municipal securities that are expressly permitted by the Act.[2] In connection with that expansion, the Commission added several provisions intended to control exposures to credit, liquidity, and market risks associated with the additional investments.

On June 30, 2003, the Commission published for public comment proposed amendments to two provisions of Rule 1.25, and it further requested comment (without proposing specific amendments) on several other provisions of the rule.[3] In February 2004, the Commission adopted final rule amendments regarding repos with customer-deposited securities and modified time-to-maturity requirements for securities deposited in connection with certain collateral management programs of DCOs.[4] The Commission did not, however, take any action on the other matters raised in its June 30, 2003 release.

The Commission is now proposing specific rule amendments related to the remaining issues raised in its June 30, 2003 request for public comment. These proposed amendments, discussed in section II.A. through C. of this release, relate to standards for investing in instruments with embedded derivatives, permitted benchmarks for adjustable rate securities,[5] and concentration limits on reverse repos. The discussion of these issues incorporates comments submitted by the Futures Industry Association ("FIA"), National Futures Association ("NFA"), and Lehman Brothers, in 2003.[6]

The Commission is also proposing amendments that address several new issues, as discussed in section II.D. through G. of this release. In this regard, the Commission is proposing an amendment requested by the FIA regarding certain transactions by FCM/BDs,[7] an amendment to eliminate the rating requirement for MMMFs, an amendment to require that all permitted MMMFs be registered with the Securities and Exchange Commission ("SEC"), and an amendment establishing an auditability standard for investment records.

Further, in Section II.H. of this release, the Commission is proposing technical amendments to Rule 1.25 to clarify the following: (1) The next-day redemption requirement for MMMFs (also codifying previously published exceptions to that requirement); (2) the rating standards for certificates of deposit; (3) the permissibility of investing in corporate bonds; (4) the inapplicability of segregation rules to securities transferred pursuant to a repo; (5) payment and delivery procedures for repos and reverse repos; and (6) the distinction between investment of customer money and investment of customer-deposited securities. The technical amendments would also conform references to applicable marketability standards, update and conform the terminology referring to a DCO, conform the terminology referring to a government sponsored enterprise ("GSE"), conform the terminology referring to an FCM, and clarify the meaning of the term "NRSRO."

The Commission solicits comment on all aspects of the proposed amendments to Rules 1.25 and 1.27. Commenters are welcome to offer their views regarding any other matters that are raised by the proposed rules.

II. Discussion of the Proposed Rules

A. Instruments With Embedded Derivatives

Rule 1.25(b)(3)(i) expressly prohibits investment of customer funds in instruments with embedded derivatives.[8] Some market participants have suggested that there are certain instruments containing embedded derivatives that have a level of risk similar to or lower than some of the other investments permitted under the rule and that embedded derivatives may otherwise have risk-neutral or even risk-mitigating effects. In June 2003, the Commission requested comment on whether Rule 1.25(b)(3)(i) should be amended to modify the prohibition on investments in securities that contain an embedded derivative. In this regard, commenters were asked to describe how the level of risk of such securities could be limited.

The FIA commented that many GSE securities contain caps, floors, puts, and calls. The FIA recommended that the Commission permit FCMs to invest in securities with such features, provided they are directly related to the interest rate characteristics of the security. The FIA stated that this standard is similar to one found in Generally Accepted Accounting Principles Statement of Financial Accounting Standards No. 133, under which embedded derivatives that are "clearly and closely related" to the "host contract" are accounted for together with the underlying instrument. The FIA further stated that caps, floors, puts and calls would all be considered "clearly and closely related" as long as they are a function of the same rate in the underlying security.

Since the FIA submitted its comment letter, FIA representatives have held further discussions with Commission staff to consider the establishment of more specific criteria that could provide greater clarity for FCMs and DCOs, as well as designated self-regulatory organization and Commission auditors. Such standards would be more readily auditable, furthering the goal of ensuring compliance.

---

[1] Section 4d(a)(2) of the Act, 7 U.S.C. 6d(a)(2), requires segregation of customer funds. It provides, in relevant part, that customer-deposited "money, securities, and property shall be separately accounted for and shall not be commingled with the funds of [the FCM] or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held."

[2] *See* 65 FR 77993 (Dec. 13, 2000) (publishing final rules); and 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating effective date of final rules from February 12, 2001 to December 28, 2000).

[3] 68 FR 38654 (June 30, 2003).

[4] 69 FR 6140 (Feb. 10, 2004).

[5] In addition to addressing the issues raised in its June 30, 2003 release, the Commission is also proposing two supplemental requirements for adjustable rate securities, as well as technical amendments relating to terminology. Among the technical amendments is a proposal to substitute the term "adjustable rate security" for the term "variable-rate security," as the latter term is currently used. *See* Section II.B.3. of this release for a discussion of proposed changes in terminology.

[6] These comment letters are available in the comment file accompanying the June 30, 2003 release, at *http://www.cftc.gov*.

[7] In connection with this proposal, the Commission is also proposing technical amendments to Rule 1.27 to clarify the recordkeeping requirements applicable to repos and proposed transactions by FCM/BDs.

[8] Rule 1.25(b)(3)(i) currently provides that "[w]ith the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, including but not limited to a call option, put option, or collar, cap, or floor on interest paid."

As the Commission has previously stated, it believes that expanding the list of permitted investments can enhance the yield available to FCMs, DCOs, and their customers, without compromising the ability of FCMs to quickly convert such investments to cash at a predictable value.[9] In light of discussions with market participants, the Commission acknowledges that there are some embedded derivatives that, at a minimum, do not appear to heighten the material risks of permitted investments and may serve to mitigate risks under certain circumstances.

The Commission, having carefully considered the merits of permitting investment of customer money in a limited selection of instruments with embedded derivatives, proposes to amend Rule 1.25(b)(3)(i) to permit FCMs and DCOs to invest in instruments with certain embedded derivatives, subject to certain express standards. Commission staff have worked with market participants to develop these standards, with the goal of excluding inappropriate instruments while including instruments that offer an attractive yield at an acceptable level of risk.

As a preliminary matter, the Commission proposes a technical amendment to paragraph (b)(3)(iii), to clarify its continued intent to maintain an express prohibition against any instrument that, itself, constitutes a derivative instrument. This was the original intent of paragraph (b)(3)(iii) which already prohibits payments linked to any underlying commodity except as expressly permitted by paragraph (b)(3)(iv) with respect to adjustable rate securities.

Proposed paragraph (b)(3)(i) would continue to generally prohibit investments in instruments with embedded derivatives, carving out an exception only for two categories of embedded derivatives that may be contained in instruments that meet specified criteria.

Proposed paragraph (b)(3)(i) sets forth the types of embedded derivatives that would be permissible. First, proposed paragraph (b)(3)(i)(A) permits an instrument to have a call feature, in whole or in part, at par, on the principal amount of the instrument before its stated maturity date. The Commission notes that the issuer's right to call an instrument prior to maturity does not jeopardize the principal amount, but merely accelerates the maturity of the instrument. Because the issuer of a callable instrument typically offers a higher return to investors in return for the right to call the issue if prevailing interest rates fall, or for other reasons, a callable instrument can afford its holders the opportunity to achieve a higher yield without exposing themselves to greater credit risk by seeking higher yields from other issuers that may be less creditworthy. That is, the reinvestment risk presented by callable instruments is of far less supervisory concern, if any, than the credit risk that may be presented by a shifting of investments to less creditworthy issuers, even within the population permitted by the credit rating requirements and other requirements of Rule 1.25.

Second, proposed paragraph (b)(3)(i)(B) addresses permissible interest rate features. The proposed revision now would permit caps, floors, or collars on the interest paid pursuant to the terms of an adjustable rate instrument. Upper and/or lower limits on interest do not jeopardize the principal amount payable at maturity. Although upper limits (caps) on adjustable rates may constrain the yield achieved if prevailing rates rise substantially, lower limits (floors) may protect the yield achieved if prevailing rates fall significantly.

Proposed paragraph (b)(3)(i) further provides that the terms of the instrument must obligate the issuer to fully repay the principal amount of the instrument at not less than par value, upon maturity. The preservation of principal is a fundamental premise upon which the Commission has based its policies regarding permitted investments. It is important to ensure that principal is protected, especially as instruments become more complex in their structure.

B. Adjustable Rate Securities

1. Permitted Benchmarks

Rule 1.25(b)(3)(iv) currently permits investment in "variable-rate securities,"[10] provided that the interest rates thereon correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, or the one-month or three-month LIBOR rate. Market participants have noted that the benchmarks used in the marketplace evolve over time. In its June 30, 2003 release, the Commission requested comment on whether the provision on permitted benchmarks should be amended and, if so, what the applicable standard should be.

The FIA recommended that Rule 1.25(b)(3)(iv) be amended to provide that permissible benchmarks can include any fixed rate instrument that is a "permitted investment" under the rule. The FIA reasoned that, if an FCM is authorized to purchase a fixed rate instrument, *e.g.*, a six-month Treasury bill, and continuously roll that instrument over, then it should be able to purchase an instrument benchmarked to that fixed rate security. This would allow FCMs to respond to new benchmarks as they evolve. In this regard, the FIA noted its understanding that, in Europe, the Euribor has become more popular than LIBOR as a benchmark in many instruments.

The Commission agrees that it is appropriate to afford greater latitude in establishing benchmarks for floating rate securities, thereby enabling FCMs and DCOs to more readily respond to changes in the market. The Commission therefore proposes to amend Rule 1.25(b)(3)(iv), proposing new paragraph (b)(3)(iv)(A)(*2*), to provide that, in addition to the benchmarks already enumerated in the rule, floating rate securities may be benchmarked to rates on any fixed rate instruments that are "permitted investments" under Rule 1.25(a). It should be noted that any resulting interest payment must be determined solely by reference to one or more permissible interest rates or relationships between a constant and one or more permissible interest rates.

In addition, the Commission believes it appropriate to clarify that neither the existing text requiring that the interest payments on variable rate securities "correlate closely and on an unleveraged basis" to certain benchmark rates, nor the proposed text requiring that the interest payments on floating rate securities "be determined solely by reference, on an unleveraged basis," to those and other benchmarks, should be read to foreclose interest payments that include some fixed arithmetic spread added to the benchmark rate itself, provided that no such spread may constitute any multiple of the benchmark rate. This reflects the original intent of this provision, and should eliminate potential errors or ambiguities in interpreting what is meant by the phrase "unleveraged basis."

2. Supplemental Requirements

The Commission is proposing to amend paragraph (b)(3)(iv) by adding two supplemental requirements that it believes are prudent and necessary in light of the increasing number and

[9] *See* 65 FR at 39014.

[10] *See* Section II.B.3. of this release for a discussion of the Commission's proposed amendments to clarify use of the terms "adjustable rate," "floating rate," and "variable rate."

complexity of adjustable rate securities that could qualify as permitted investments for FCMs and DCOs. Under proposed paragraph (b)(3)(iv)(A)(*3*), any benchmark rate would have to be expressed in the same currency as the adjustable rate security referencing it. This eliminates the need to calculate and account for changes in applicable currency exchange rates. Under proposed paragraph (b)(3)(iv)(A)(*4*), the periodic coupon payments could not be a negative amount. This is designed to prevent FCMs and DCOs from investing in instruments that the Commission believes do not reflect an acceptable level of risk.

3. Technical Amendments

The Commission is proposing to revise certain terminology used in paragraph (b)(3)(iv) for the purpose of clarifying, not changing, the meaning of this provision. Paragraph (b)(3)(iv) currently uses the term "variable-rate securities" without distinguishing between securities for which periodic interest payments vary by formula or other reference calculation any time a specified interest rate changes (termed a "floating rate security" by the SEC),[11] and those for which periodic interest payments are adjusted on set dates (termed a "variable rate security" by the SEC).[12] For purposes of clarity and to ensure consistency with the paragraph (b)(5) time-to-maturity provision,[13] the Commission is proposing to amend paragraph (b)(3)(iv) to distinguish the terms "floating rate security" and "variable rate security" and, where appropriate, to use the term "adjustable rate security," to refer to either or both of the foregoing.

In this regard, the Commission proposes to add a new paragraph (b)(3)(iv)(B), defining the above terms for purposes of paragraph (b)(3)(iv). Proposed paragraph (b)(3)(iv)(B)(*1*) defines "adjustable rate security" as described above. Using the SEC's definition, proposed paragraph (b)(3)(iv)(B)(*2*) defines "floating rate security" as a security, the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost. Also using the SEC's definition, proposed paragraph (b)(3)(iv)(B)(*3*) defines "variable rate security" as a security, the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

4. Auction Rate Securities

The Commission received an inquiry from an FCM interested in investing customer funds in certain auction rate securities ("ARS"). The specific instruments described by this FCM were issued by a quasi-governmental corporate entity established in the Commonwealth of Massachusetts. Such an issuer cannot be considered to be a political subdivision of a State as described in the Act and in paragraph (a)(ii) of Rule 1.25 but, rather, must be considered to be a corporate issuer under paragraph (a)(vi).

Currently, paragraph (a)(vi) uses the term "corporate notes," which may create some uncertainty as to the Commission's intent regarding the duration of such instruments. In particular, the specific instruments that were the subject of the inquiry have maturity dates many years in the future. As discussed in section II.H.3. of this release, the Commission is proposing a technical change to now use the term "corporate notes or bonds," for clarity. Accordingly, an ARS that had an initial term to maturity exceeding five or even ten years would not be prohibited outright, but would, as with all other securities in the portfolio, be subject to the portfolio time-to-maturity requirements consistent with paragraph (b)(5), which focuses on the remaining time to maturity.

This inquiry also raises the separate question of whether the process by which the periodic interest payments are determined for ARS is permissible. It appears that the typical process is to reset the interest rate through "Dutch auctions" held on relatively short cycles, such as 7, 14, 28, or 35 days, with interest paid at the end of each auction period. The full principal is due at a set maturity date, typically years from the date of issue. In such an auction, broker-dealers submit bids to an auction agent (typically a large money center bank). The interest rate for the next period is set by identifying the lowest rate that will clear the total outstanding amount of securities. The "auctions" are for the purpose of rate-setting and, absent other express terms of the agreement, do not constitute an opportunity either for the holders to put the securities to the issuer or for the issuer to call the securities from the holders. As with other debt securities, holders of ARS may attempt to resell them by contacting broker-dealers or other potential buyers, but there is no continuous bid/offer stream, although bids and offers may be available upon request from major dealers active in the market.

It has been represented to the Commission that the interest payments on the particular issue which was the subject of the inquiry, and those of many other ARS issues, demonstrate close historical correlation to key short-term interest rates. As described, therefore, the process of establishing periodic interest payments in such a manner would not violate the requirements of current paragraph (b)(3)(iv) or proposed paragraph (b)(3)(iv)(A)(*1*), if, in fact, they are closely correlated to a permitted benchmark.

C. Reverse Repos—Concentration Limits

Rule 1.25(b)(4)(iii) establishes concentration limits for reverse repos.[14] These restrictions, which were adopted in response to public comment, take into consideration the identity of both the issuer of the securities and the counterparty to the reverse repo. Consideration as to counterparty was based on the counterparty having direct control over which specific securities would be supplied in a transaction.[15] Given industry experience over the past several years, however, it has been brought to the attention of the Commission that the ability of FCMs and DCOs to monitor compliance with this two-prong standard has proven to be operationally unworkable. As a result, in June 2003, the Commission requested comment on market participants' experience with the current provisions relating to reverse repos and suggestions on how best to address the risks of these transactions.

The FIA commented that, although the concentration limits for reverse repos were imposed to remove restrictions that commenters previously

[11] *See* SEC Rule 2a–7(a)(13), 17 CFR 270.2a–7(a)(13).

[12] *See* SEC Rule 2a–7(a)(29), 17 CFR 270.2a–7(a)(29).

[13] Under Rule 1.25(b)(5), the portfolio time-to-maturity calculation is computed pursuant to SEC Rule 2a–7.

[14] As used in this release, the term "reverse repo" means an agreement under which an FCM or DCO buys a security that is a permitted investment from a qualified counterparty, with a commitment to resell that security to the counterparty at a later date. A "repo" is an agreement under which an FCM or DCO sells a security to a qualified counterparty, with a commitment to repurchase that security at a later date.

[15] *See* 65 FR 77993, 78002 (Dec. 13, 2000).

had identified as inhibiting their use of reverse repos, as a practical matter, an FCM cannot monitor such transactions by security, size and counterparty except through manual processing. As a result, this investment alternative has not proved to be viable. The FIA expressed the view that all securities held by an FCM, either through an investment of customer funds or through a reverse repo, should be subject to the concentration limits for direct investments.

The Commission proposes to amend paragraph (b)(4)(iii) to make reverse repos subject to the concentration limits for direct investments under Rule 1.25(b)(4)(i). In re-evaluating the existing concentration limits, the Commission has concluded that imposing issuer-based concentration limits, as originally proposed for permitted investments including securities obtained through reverse repos, is an appropriate and adequate safeguard.[16] The Commission's primary regulatory concern focuses on the actual holdings in the customer segregated account (*i.e.*, cash, securities, or other property) at any given time. Accordingly, under the proposal, all investment securities in the account, whether obtained pursuant to direct investment or reverse repo, would be subject to the same concentration limits.

D. Transactions by FCM/BDs

In its comment letter responding to the Commission's June 30, 2003 request for public comment, the FIA proposed adding a new provision to Rule 1.25 that would permit an FCM/BD to engage in transactions that involve the exchange of customer money or customer-deposited securities for securities that are held by the FCM in its capacity as a securities broker-dealer ("in-house transactions").[17] Lehman Brothers also submitted a comment letter in support of the FIA's proposal.

The FIA recommended that the Commission authorize an FCM/BD that, in its capacity as a broker-dealer, owns or has the unqualified right to pledge securities that are "permitted investments," to invest customer money by effecting a transfer of such securities to the customer segregated account. Similarly, in lieu of using customer-deposited securities in a repo with a third party, the FIA proposed that an FCM/BD should be authorized to effect similar transactions by means of a transfer of customer-owned securities in exchange for permitted investments that the FCM/BD holds in its capacity as a broker-dealer. The FIA further proposed that the FCM/BD transactions be subject to the recordkeeping requirements of Commission rules 1.25, 1.26, 1.27, 1.28, and 1.36, as well as applicable SEC rules. With respect to transactions involving customer-owned securities, the FIA stated that the records should reflect the customer's continued ownership interest in those securities.

The FIA proposed to apply to in-house transactions certain standards that currently apply to repos and reverse repos under Rule 1.25(d), *i.e.*, the identification of securities by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number (paragraph (d)(1)); the ability to unwind a transaction within one business day or on demand (paragraph (d)(5)); and the recognition of an accomplished transaction only when the securities are actually received by the custodian of the FCM's customer segregated account (paragraph (d)(8)). The FIA proposed to apply the concentration requirements applicable to direct investments (paragraph (b)(4)(i)) and to treat the securities deposited in the customer segregated account as a result of the in-house transaction as having a one-day time-to-maturity.

Lehman Brothers asserted its belief that such transactions are permissible under Section 4d(a)(2) of the Act[18] and Rule 1.25, and do not present any unique customer protection concerns. Lehman Brothers described the proposed transactions as an alternative to reverse repos and repos entered into between an FCM/BD and a third party.

In considering issues related to the investment of customer money or securities by an FCM, the Commission's primary interest is in preserving the integrity of the customer segregated account. Not only must there be sufficient value in the account at all times, but the quality of investments must reflect an acceptable level of credit, market, and liquidity risk. In this regard, it is important that non-cash assets can be quickly converted to cash at a predictable value.

The in-house transactions proposed by FIA and Lehman Brothers are intended to provide the economic equivalent of repos and reverse repos with third parties. A key benefit that the in-house transactions offer is that they can assist an FCM both in achieving greater capital efficiency and in accomplishing important risk management goals, including internal diversification targets. For example, customer-deposited securities that are not acceptable as collateral for DCO performance bond requirements could be exchanged for securities that are acceptable. This would permit the more efficient use of an FCM/BD's total holdings. There also would be certain operational efficiencies given the ability to readily substitute forms of collateral prior to delivering that collateral to a DCO.

The Commission recognizes that all permitted investments under Rule 1.25(a)(1) do not have the same risk profile, and that substitution of one type of permitted investment for another could alter the risk profile of a customer segregated account. However, the Commission has previously determined that all of the instruments that are permitted investments are appropriate investments for customer money, subject to specified requirements. Thus, the substitution of one permitted investment for another in an in-house transaction will not present an unacceptable level of risk to the customer segregated account.

In light of the above considerations, the Commission is proposing to amend Rule 1.25 by adding new paragraphs (a)(3) and (e)[19] to permit FCM/BDs to engage in in-house transactions subject to specified requirements.

Proposed paragraph (a)(3)(i) provides that customer money may be exchanged for securities that are permitted investments and are held by an FCM/BD in connection with its securities broker or dealer activities. Proposed paragraph (a)(3)(ii) provides that securities deposited by customers as margin may be exchanged for securities that are permitted investments and are held by an FCM/BD in connection with its securities broker or dealer activities. Proposed paragraph (a)(3)(iii) provides that securities deposited by customers as margin may be exchanged for cash that is held by an FCM/BD in connection with its securities broker or dealer activities.

The authority granted under paragraph (a)(3) would be subject to the requirements of proposed new paragraph (e), which incorporates many of the same restrictions currently imposed on repo and reverse repo transactions under paragraph (d). Certain provisions of paragraph (e) have been adapted to reflect the operational differences between an in-house transaction and a third-party transaction.

Proposed paragraph (e)(1) requires that the FCM, in connection with its

[16] *See* 65 FR 39008, 39020 (June 22, 2000).

[17] Since the submission of its comment letter, the FIA has further requested that the provision also address transactions in which customer-deposited securities are exchanged for cash.

[18] 7 U.S.C. 6d(a)(2).

[19] The current paragraph (e) would be redesignated as paragraph (f).

securities broker or dealer activities, must own or have the unqualified right to pledge the securities that are exchanged for customer money or securities held in the customer segregated account. The securities may be held as part of the broker-dealer inventory or may have been deposited with the broker-dealer by its customers.

Proposed paragraph (e)(2) requires that the transaction can be reversed within one business day or upon demand. This standard also applies to repos and reverse repos under Rule 1.25(d)(5), with the goal of establishing investment liquidity.

Proposed paragraph (e)(3) incorporates the Rule 1.25(d)(1) requirement that the securities transferred from and to the customer segregated account be specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

Proposed paragraph (e)(4) establishes two general requirements for the types of customer-deposited securities that can be used in the in-house transactions. These same requirements apply to customer-deposited securities used in repos under Rule 1.25(a)(2)(ii). Paragraph (e)(4)(i) incorporates the Rule 1.25(a)(2)(ii)(A) requirement that the securities must be "readily marketable" as defined in SEC Rule 15c3–1.[20] Paragraph (e)(4)(ii) incorporates the Rule 1.25(a)(2)(ii)(B) requirement that the securities not be "specifically identifiable property" as defined in Rule 190.01(kk).

Proposed paragraph (e)(5) establishes requirements for securities that will be transferred to the customer segregated account as a result of the in-house transaction, clarifying the treatment of these securities once they are held in the customer segregated account. Proposed paragraph (e)(5)(i) requires that the securities be priced daily based on the current mark-to-market value. Proposed paragraph (e)(5)(ii) provides that the securities will be subject to the concentration limit requirements applicable to direct investments, as provided in proposed Rule 1.25(b)(4)(iv) (discussed below). This is the same treatment that the Commission is proposing to apply to repos and reverse repos.[21] Proposed paragraph (e)(5)(iii) provides that the securities transferred to the customer segregated account must be held in a safekeeping account with a bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Rule 1.26. This same requirement is applied to repos and reverse repos under Rule 1.25(d)(6).[22]

Proposed paragraph (e)(5)(iv) incorporates the Rule 1.25(d)(7) restrictions on the subsequent use of the securities. It provides that the securities may not be used in another similar transaction and may not otherwise be hypothecated or pledged, except such securities may be pledged on behalf of customers at another FCM or a DCO. It permits substitution of securities if: (1) The securities being substituted and the original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers; (2) substitution is made on a "delivery versus delivery" basis; and (3) the market value of the substituted securities is at least equal to that of the original securities.

Proposed paragraph (e)(6) sets forth the payment and delivery procedures for in-house transactions. Adapted from Rule 1.25(d)(8), the provisions are designed to ensure that in-house transactions are carried out in a manner that does not jeopardize the adequacy of funds held in the customer segregated account.

Proposed paragraph (e)(6)(i) governs transactions under proposed paragraph (a)(3)(i). It provides that the transfer of securities to the customer segregated custodial account must be made simultaneously with the transfer of money from the customer segregated cash account. Money held in the customer segregated cash account cannot be disbursed prior to the transfer of securities to the customer segregated custodial account. Any transfer of securities to the customer segregated custodial account cannot be recognized as accomplished until the securities are actually received by the custodian of such account. Upon unwinding of the transaction, the customer segregated cash account must receive same-day funds credited to such account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

Proposed paragraph (e)(6)(ii) governs transactions under proposed paragraph (a)(3)(ii). It provides that the transfer of securities to the customer segregated custodial account must be made simultaneously with the transfer of securities from the customer segregated custodial account. Securities held in the customer segregated custodial account cannot be released prior to the transfer of securities to that account. Any transfer of securities to the customer segregated custodial account cannot be recognized as accomplished until the securities are actually received by the custodian of such account. Upon unwinding of the transaction, the customer segregated custodial account must receive the securities simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

Proposed paragraph (e)(6)(iii) governs transactions under proposed paragraph (a)(3)(iii). It provides that the transfer of money to the customer segregated cash account must be made simultaneously with the transfer of securities from the customer segregated custodial account. Securities held in the customer segregated custodial account cannot be released prior to the transfer of money to the customer segregated cash account. Any transfer of money to the customer segregated cash account cannot be recognized as accomplished until the money is actually received by the custodian of such account. Upon unwinding of the transaction, the customer segregated custodial account must receive the securities simultaneously with the disbursement of money from the customer segregated cash account.

Proposed paragraph (e)(7) provides that the FCM must maintain all books and records with respect to the in-house transactions in accordance with Rules 1.25, 1.27, 1.31, and 1.36, as well as the applicable rules and regulations of the SEC. This clarifies the pre-existing obligations of the FCM, and it is adapted from Rule 1.25(d)(10).

Proposed paragraph (e)(8) incorporates the requirements of Rule 1.25(d)(11). It provides that an actual transfer of securities by book entry must be made consistent with Federal or State commercial law, as applicable. Moreover, at all times, securities transferred to the customer segregated account are to be reflected as "customer property."

Proposed paragraph (e)(9) provides that, for purposes of Rules 1.25, 1.26, 1.27, 1.28 and 1.29, securities transferred to the customer segregated account will be considered to be customer funds until the money or securities for which they were exchanged are transferred back to the customer segregated account. As a

[20] 17 CFR 240.15c3–1.

[21] *See* section II.C. of this release.

[22] Note that the Commission has not included in this paragraph the FIA's proposed one-day time-to-maturity treatment for securities transferred to the customer segregated account. Although an in-house transaction could be reversed within one day, the rule would not require that it be reversed within that time frame. Effectively, these instruments would be subject to the same risks associated with the price sensitivity of direct investments and, accordingly, should be subject to the same standards in order to maximize the protection of principal. Special treatment would undermine the purpose of the time-to-maturity requirement.

result, in the event of the bankruptcy of the FCM, any securities transferred to and held in the customer segregated account as a result of an in-house transaction could be immediately transferred to another FCM. This provision adapts, in part, the provisions set forth in Rule 1.25(d)(12).

Proposed paragraph (e)(10) addresses the failure to return customer-deposited securities to the customer segregated account. Adapted from Rule 1.25(a)(2)(ii)(D), it provides that in the event the FCM is unable to return to the customer any customer-deposited securities used in an in-house transaction the FCM must act promptly to ensure that there is no resulting direct or indirect cost or expense to the customer.

As explained above, under proposed paragraph (e)(5)(ii), the Commission would apply the concentration limits for direct investments to securities transferred to the customer segregated account as a result of an in-house transaction. To effect this treatment, the Commission proposes to amend Rule 1.25(b)(4) by adding a new paragraph (iv) to provide that, for purposes of determining compliance with applicable concentration limits, securities transferred to a customer segregated account pursuant to Rule 1.25(a)(3) will be combined with securities held by the FCM as direct investments. In adding this new provision, the Commission would also redesignate existing paragraphs (b)(4)(iv) and (v) as (b)(4)(v) and (vi), respectively.

The Commission also proposes an additional technical amendment to Rule 1.27 to clarify the applicability of recordkeeping requirements to securities transferred to and from the customer custodial account pursuant to repos and in-house transactions. Rule 1.27 provides that each FCM that invests customer funds and each DCO that invests customer funds of its clearing members' customers or option customers must keep a record showing specified information. Among the items to be recorded are the amount of money so invested (paragraph (a)(3)) and the date on which such investments were liquidated or otherwise disposed of and the amount of money received of such disposition, if any (paragraph (a)(6)). The Commission proposes to insert, after the reference to "amount of money" the phrase "or current market value of securities." This would clarify that amounts recorded must include the value of securities, as well as cash.

E. Rating Standards for MMMFs

Rule 1.25 permits FCMs and DCOs to invest customer funds in MMMFs, subject to certain standards set forth in the rule. Among those standards is the requirement that MMMFs that are rated by a nationally recognized statistical rating organization ("NRSRO") must be rated at the highest rating of the NRSRO.[23] While the rule does not permit investments in lower rated MMMFs, it does not prohibit investments in unrated MMMFs. As a result, a rated MMMF that does not have the highest rating is not acceptable as a permitted investment, but an unrated MMMF is acceptable.[24]

The Commission has been asked to consider eliminating the rating requirement for MMMFs. In particular, Federated Investors, Inc., ("Federated") has expressed the view that the rating requirement creates a competitive inequity for rated MMMFs that have yield and portfolio characteristics similar to the unrated funds that are commonly used by FCMs for investment of customer funds.[25] According to Federated, lower rated MMMFs, like many unrated MMMFs, do not qualify for the highest rating by an NRSRO because they hold split-rated and other securities in their portfolios, which are not approved by the NRSROs for triple-A rated funds, and because the average maturity of their portfolios may exceed 60 days.

As an example of the competitive inequity, Federated points to its Federated Prime Value Obligations Fund, a single-A rated fund that it describes as having essentially the same yield and portfolio characteristics as unrated competitors. Like unrated competitors, the fund cannot receive a triple-A rating because it holds split-rated and other securities in its portfolio, which are not approved by the NRSROs for triple-A rated funds, and because the average maturity of its portfolio may exceed 60 days. Because of the single-A rating, however, the Prime Value Obligations Fund, unlike competing unrated funds, cannot be used for investment of customer funds. Federated believes that the fact that the fund is rated should make it a more acceptable investment than an unrated fund.

Federated asserts that the rating limitation does not provide additional investor protections. It further argues that the investor protections afforded by SEC Rule 2a–7 [26] make the rating requirement unnecessary. In this regard, Federated observes that the rule imposes strict portfolio quality, diversification, and maturity standards, which greatly limit the possibility of significant deviation between the share price of a fund and its per share net asset value. Additionally, Federated notes that MMMFs are subject to board oversight regarding credit quality requirements and investment procedures.

Rule 1.25(c) sets forth additional requirements for MMMFs. Paragraph (c)(1) establishes SEC Rule 2a–7 as a basic standard of adequacy. More specifically, paragraph (c)(1) provides that, generally, the MMMF must be an investment company that is registered with the SEC under the Investment Company Act of 1940 and that holds itself out to investors as an MMMF in accordance with SEC Rule 2a–7.[27]

It appears that the rating requirement for MMMFs under Rule 1.25(b)(2)(i)(E) is not essential in light of the other risk-limiting provisions applicable to MMMFs under Rule 1.25 and SEC Rule 2a–7. In consideration of the anomalous situation created by the use of unrated funds as permitted investments, the Commission is proposing to amend Rule 1.25(b)(2)(i)(E) to eliminate the rating requirement for MMMFs.

F. Registration Requirement for MMMFs

As discussed above, Rule 1.25(c)(1) provides that, generally, an MMMF must be an investment company that is registered with the SEC under the Investment Company Act of 1940 and that holds itself out to investors as an MMMF in accordance with SEC Rule 2a–7. Paragraph (c)(1) further provides that an MMMF sponsor may petition the Commission for an exemption from this requirement, and the Commission may grant such an exemption if the MMMF can demonstrate that it will operate in a manner designed to preserve principal and to maintain liquidity. The exemption request must include a description of how the fund's structure, operations and financial reporting are expected to differ from the requirements in SEC Rule 2a–7 and applicable risk-limiting provisions contained in Rule 1.25. In addition, the MMMF must specify the information that it would

[23] *See* Rule 1.25(b)(2)(i)(E).

[24] The Commission notes that a substantial percentage of customer money invested in MMMFs is invested in unrated funds.

[25] *See* letter from Melanie L. Fein, Goodwin Proctor LLP, on behalf of Federated, dated April 8, 2004, available in the comment file accompanying this proposed rulemaking, at *http://www.cftc.gov*.

[26] 17 CFR 270.2a–7.

[27] A fund sponsor may petition for exemption from this requirement, and the Commission may grant an exemption, if the fund can demonstrate that it will operate in a manner designed to preserve principal and to maintain liquidity. As discussed in Section II.F. of this release, however, the Commission is proposing to eliminate this exemption provision.

make available to the Commission on an on-going basis.

The Commission has not received any formal exemption requests under paragraph (c)(1), but it has received several informal inquiries. In evaluating these inquiries, Commission staff have explored alternative standards that could be used to ascertain whether an MMMF will operate in a manner designed to preserve principal and to maintain liquidity and, therefore, could be exempted. As a result of this exercise, it has become apparent that establishing such standards presents substantial practical and policy issues.

For example, from a practical standpoint, granting an exemption would require that the Commission, on a case-by-case basis, review a particular MMMF's risk-limiting policies and procedures and determine that, notwithstanding deviations from the Rule 2a–7 requirements, those policies and procedures will operate to preserve principal and to maintain liquidity. Moreover, if an exemption were granted, Commission staff would have to maintain oversight over the exempt MMMF to ascertain that it continues to operate in accordance with the Commission's standards. The Commission believes that it would be inefficient to devote substantial resources to the exemption process. In addition, the Commission is concerned that this process could produce inconsistent results and give rise to an uncertain framework for regulatory oversight.

From a policy standpoint, the Commission is concerned that by granting an exemption, the Commission may be perceived as expressing a view about the adequacy of an MMMF's overall risk-limiting policies and procedures and, ultimately, upon the investment quality of any particular MMMF. The Commission does not wish to provide, or be perceived as providing, any such assurances to FCMs or DCOs that might be interested in investing customer money in an exempt MMMF.

In light of the above considerations, the Commission believes that the exemptive process, in this situation, does not serve the best interests of the futures industry or the public. Accordingly, the Commission is proposing to amend paragraph (c)(1) to eliminate the availability of an exemption for unregistered funds.[28] While this removes the possibility of adding certain MMMFs to the pool of qualifying permitted investments, the Commission believes that this potential loss would be mitigated by the availability of additional MMMF investments under the Commission's proposed amendment to permit investments in MMMFs that are rated below the top rating of an NRSRO.[29] The requirement that all MMMFs be registered and qualify as SEC Rule 2a–7 funds, without exception, is consistent with the Commission's reliance on SEC Rule 2a–7 standards in its proposal to eliminate rating requirements for MMMFs.

G. Auditability Standard for Investment Records

Rule 1.27 sets forth recordkeeping requirements for FCMs and DCOs in connection with the investment of customer funds under Rule 1.25. More specifically, the rule lists the types of information that an FCM or DCO must retain, subject to the further recordkeeping requirements of Rule 1.31.

The Commission proposes to amend Rule 1.27 by adding a new provision to establish an auditability standard for pricing information related to all instruments acquired through the investment of customer funds. Such a standard will facilitate the maintenance of reliable and readily available valuation information that can be properly audited. This is particularly important with respect to instruments for which historical valuation information may not be retrievable from third party sources at the time of an audit.

Accordingly, the Commission proposes to amend Rule 1.27 by adding a new paragraph (a)(8), to require FCMs and DCOs to maintain supporting documentation of the daily valuation of instruments acquired through the investment of customer funds, including the valuation methodology and third party information. Such supporting documentation must be sufficient to enable auditors to verify information to external sources and recalculate the valuation for a given instrument.

The Commission requests comment on the practices and procedures that FCMs and DCOs would have to implement in order to comply with such a standard and whether compliance would require substantial operational changes. To the extent that there may be issues regarding implementation of procedures to facilitate auditability, the Commission requests comment on how it should address those issues.

H. Additional Technical Amendments

1. Clarifying and Codifying MMMF Redemption Requirements

The Commission currently permits FCMs and DCOs to invest customer money in MMMFs in accordance with the standards set forth in Rule 1.25(c). Among those standards is the requirement that the MMMF be able to redeem the interest of the FCM or DCO by the business day following a redemption request. The Commission proposes to amend paragraph (c)(5) to clarify that the MMMF must be legally obligated to redeem the interest and make payment in satisfaction thereof by the business day following the redemption request. In addition, the Commission proposes a further amendment to codify previously articulated exceptions to the next-day redemption requirement.

(i) Next-Day Redemption Requirement

In response to inquires from participants in the futures and mutual fund industries, the Commission proposes to amend paragraph (c)(5) to clarify that next-day redemption and payment is mandatory. To effect this, the Commission proposes to eliminate the language requiring that the MMMF "must be able to redeem an interest by the next business day following a redemption request" and to substitute in its place a provision that requires the fund to "be legally obligated to redeem an interest and make payment in satisfaction thereof by the business day following a redemption request." The revised language unambiguously establishes the mandatory nature of the redemption obligation and also clarifies the distinction between redemption (valuation) of MMMF interests and actual payment for those redeemed interests.

The Commission recognizes that the phrase, "able to redeem," on its face, could be interpreted to mean the MMMF must have the capability to redeem, but need not have the obligation to redeem. However, this is not the intended meaning of the provision.

In adopting the next-day redemption requirement in December 2000, the Commission responded to a public comment recommending that the one-day liquidity requirement be extended to seven days to be consistent with SEC requirements and the longer settlement time frames associated with direct investments.[30] The Commission explained its position as follows:

[28] Related to this, the Commission also proposes a technical amendment that would delete the reference to "a fund exempted in accordance with paragraph (c)(1) of this section" at the end of paragraph (c)(2).

[29] *See* discussion in Section II.E. of this release.

[30] *See* 65 FR at 78003.

The Commission believes the one-day liquidity requirement for investments in MMMFs is necessary to ensure that the funding requirements of FCMs will not be impeded by a long liquidity time frame. Since a material portion of an FCM's customer funds could well be invested in a single MMMF, this is an important provision of the rule. The Commission notes that, although sales of directly-owned securities settle in longer than one-day time-frames, an FCM or clearing organization could obtain liquidity by entering intc a repurchase transaction. Therefore, the Commission has retained the one-day liquidity requirement imposed on investments in MMMFs and, in view of the importance of this provision, has clarified that demonstration that this requirement has been met may include either an appropriate provision in the offering memorandum of the fund or a separate side agreement between the fund and an FCM or clearing organization.[31]

Thus, the next-day redemption requirement is not met even if an MMMF, as a matter of practice, offers same-day or next-day redemption if there is no binding obligation to do so.

The second provision of paragraph (c)(5) suggests two ways in which an FCM or DCO may demonstrate compliance with the next-day redemption requirement, *i.e.*, an appropriate provision in the fund's offering memorandum or a separate side agreement between the fund and the FCM or DCO. In view of the proposed changes in the first provision of paragraph (c)(5), the Commission believes that it is not necessary to specify ways in which an FCM or DCO can demonstrate that the requirement has been met. The Commission therefore proposes to eliminate the second provision and to substitute in its place a provision that requires the FCM or DCO to retain documentation demonstrating compliance with the next-day redemption requirement. Such documentation can then be produced for audit purposes.

(ii) Exceptions to the Next-Day Redemption Requirement

In response to an inquiry from the Board of Trade Clearing Corporation in 2001, the Commission's Division of Trading and Markets issued a letter stating that it would raise no issue in connection with MMMFs that provide for certain exceptions to the practice of next-day redemption.[32]

The letter specifically identified circumstances in which next-day redemption could be excused: (1) Non-routine closure of the Fedwire or applicable Federal Reserve Banks; (2) non-routine closure of the New York Stock Exchange or general market conditions leading to a broad restriction of trading on the New York Stock Exchange, *i.e.*, a restriction of trading due to market-wide events; or (3) declaration of a market emergency by the SEC. The letter also included a catch-all provision that included emergency conditions set forth in Section 22(e) of the Investment Company Act of 1940.[33]

The Commission proposes to codify these exceptions in new paragraph (c)(5)(ii) and, in so doing, to redesignate the existing paragraph (c)(5), as amended, as paragraph (c)(5)(i). The Commission recognizes that there is some overlap between the enumerated exceptions and those contained in Section 22(e), but it believes that this is appropriate given the need to provide for all relevant circumstances.

2. Clarifying Rating Standards for Certificates of Deposit

Rule 1.25(b)(2)(i)(B) sets forth the rating requirements for municipal securities, GSE securities, commercial paper, corporate notes that are not asset-backed, and certificates of deposit.[34] The Commission notes that certificates of deposit, unlike the other instruments listed in that paragraph, are not directly rated by an NRSRO.

Because NRSRO ratings reflect the financial strength of the issuer of an instrument, they offer a useful standard, among others, for determining whether an instrument can be a permitted investment for customer money. Although certificates of deposit are not rated by NRSROs, it is possible to apply a rating standard by using, as a proxy, the ratings of other instruments issued by the issuers of certificates of deposit. For example, the Commission has previously taken this approach in establishing standards for foreign depository institutions that may hold customer funds. In this regard, Rule 1.49(d)(3)(i) provides that, in order to hold customer funds, a bank or trust company located outside the United States must satisfy either of the following requirements: (1) It must have in excess of $1 billion of regulatory capital; or (2) the bank or trust company's commercial paper or long-term debt instrument, or if the institution is part of a holding company system, its holding company's commercial paper or long-term debt instrument, must be rated in one of the two highest rating categories by at least one NRSRO.

Consistent with this approach, the Commission believes that it is appropriate to use, as a proxy for a certificate of deposit rating, NRSRO ratings for the commercial paper or long-term debt instrument of the issuer of the certificate of deposit or such issuer's parent holding company. Accordingly, the Commission proposes to delete the reference to certificates of deposit in paragraph (b)(2)(i)(B) of Rule 1.25 and insert a new paragraph (E) that would apply the same standard contained in paragraph (b)(2)(i)(B) to the commercial paper or long-term debt instrument issued by the certificate of deposit issuer or its holding company.

3. Clarifying Corporate Bonds as Permitted Investments

Paragraph (a)(vi) currently uses the term "corporate note," which may be interpreted by some market participants to mean obligations whose original term to maturity does not exceed five years or perhaps ten years. However, the Commission proposes to clarify that this is not its intent by amending paragraphs (a)(1)(vi), (b)(2)(i)(B) and (C), and (b)(4)(i)(C) to use the term "corporate notes or bonds." Rather than constrain the types of permitted investments on the basis of their original term to maturity, the Commission has addressed the issue of the greater price sensitivity of longer-term and fixed rate instruments to changes in prevailing interest rates by adopting the portfolio time-to-maturity requirements of paragraph (b)(5); thus, it is the remaining term to maturity that is relevant.

4. Clarifying References to Transferred Securities

Rule 1.25(a)(2) permits FCMs and DCOs to enter into repos using customer-deposited securities and securities that are permitted investments purchased with customer money. Such transactions are subject to the provisions of paragraph (d) of Rule 1.25. Among those provisions is paragraph (d)(6), which requires that the "securities transferred under the

[31] *Id.*

[32] *See* CFTC Staff Letter No. 01–31, [2000–2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,521 (Apr. 2, 2001).

[33] 15 U.S.C. 80a–22(e).

[34] More specifically, Rule 1.25(b)(2)(i)(B) provides as follows: "Municipal securities, government sponsored agency securities, certificates of deposit, commercial paper, and corporate notes, except notes that are asset-backed, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO."

agreement" must be held in a safekeeping account with a bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Rule 1.26.

The Commission has been asked whether the reference to "securities transferred under the agreement" is intended to include not only in-coming securities, but out-going securities as well. Such an interpretation would mean that any out-going securities, in addition to any in-coming cash, would have to be held in a customer segregated account in accordance with Rule 1.26.[35] This is not the intended outcome, and the Commission therefore is proposing to amend paragraph (d)(6) to clarify that Rule 1.26 applies only to securities transferred to (not from) an FCM or DCO.[36]

The Commission also is proposing technical amendments to paragraphs (d)(3) and (d)(11) to similarly clarify that the securities referred to in those provisions are securities transferred to (not from) the customer segregated custodial account of an FCM or DCO.

5. Clarifying Payment and Delivery Procedures for Reverse Repos and Repos

The Commission is proposing to amend paragraph (d)(8) to clarify payment and delivery procedures for reverse repos and repos. Paragraph (d)(8) currently provides that the "transfer of securities" must be made on a delivery versus payment basis in immediately available funds. The Commission proposes to amend this provision to clarify that the delivery versus payment requirement applies to the transfer of securities to (not from) the customer segregated custodial account, as would be the case in a reverse repo. The Commission further proposes to add a sentence clarifying that the transfer of funds to the customer segregated cash account, as would be the case in a repo, must be made on a payment versus delivery basis.

The Commission requests comment on whether these amendments accurately reflect the current practices of FCMs and DCOs and, if not, how existing business practices operate to otherwise enable FCMs and DCOs engaging in repurchase transactions to maintain the proper amount of funds in segregated accounts at all times.

6. Changing Paragraph (a)(1) "Customer Funds" to "Customer Money"

Rule 1.25(a)(1) authorizes FCMs and DCOs to invest "customer funds" in enumerated permitted investments. Paragraph (a)(1) uses the term "customer funds" to describe customer money deposited with an FCM or a DCO to margin futures or options positions. Because the term "customer funds" is otherwise defined in Rule 1.3(gg) to include more than customer money, the Commission proposes to amend paragraph (a)(1) to substitute the term "customer money" for the term "customer funds."

The word "money" is used in Section 4d(a)(2) of the Act with reference to permitted investments, and the term "customer money" was originally used in Rule 1.25. The term was changed to "customer funds" in 1968 when the Commission's predecessor agency, the Commodity Exchange Authority, adopted revisions to conform the rule to amendments to Section 4d of the Act.[37] No explanation was given for the change in terminology.

Subsequently, in 1981, the Commission adopted a definition of "customer funds" in Rule 1.3(gg), when it adopted rules related to futures options.[38] That term encompasses more than money, and includes securities and other property belonging to the customer.

Substituting the term "customer money" for the term "customer funds" in paragraph (a)(1) conforms the language of that paragraph to the language of Section 4d(a)(2) of the Act and clarifies the meaning of the term in relation to other provisions of Rule 1.25. The need for this proposed change in terminology arises in the context of distinguishing between customer money and customer-deposited securities, which are the subject of Rule 1.25(a)(2)(ii) (repos with customer-deposited securities) and proposed Rule 1.25(a)(3)(ii) and (iii) (in-house transactions with customer-deposited securities).

7. Conforming Reference to "Marketability" Requirement

Rule 1.25(a)(2)(ii), which permits FCMs and DCOs to sell customer-deposited securities pursuant to repos, sets forth various requirements for such transactions. Among them is the requirement, under paragraph (a)(2)(ii)(A), that securities subject to repurchase must meet the marketability requirement contained in paragraph (b)(1) of Rule 1.25. Paragraph (b)(1), in turn, cross-references the marketability requirement contained in SEC Rule 15c3–1. For purposes of clarity, the Commission proposes to amend Rule 1.25(a)(2)(ii)(A) to eliminate the cross-reference to paragraph (b)(1) and substitute that paragraph's direct cross-reference to SEC Rule 15c3–1.

8. Conforming Terminology for "Derivatives Clearing Organizations"

Rule 1.25 uses the term "clearing organization" to describe an entity that performs clearing functions. The Act, as amended by the Commodity Futures Modernization Act of 2000,[39] now provides that a clearing organization for a contract market must register as a "derivatives clearing organization" and must comply with core principles set forth in the statute.[40] The Commission proposes technical amendments to Rule 1.25 to change the term "clearing organization" to "derivatives clearing organization." This will conform the language of Rule 1.25 to the language of the Act, more accurately reflecting the current statutory framework.

As an additional matter, in connection with its proposed technical amendments to Rule 1.27,[41] the Commission also proposes to change the term "clearing organization" to "derivatives clearing organization" in that rule.

9. Conforming Terminology for "Government Sponsored Enterprise"

The Commission is also proposing a technical amendment to Rule 1.25 to change terminology referring to government sponsored "agency" securities to government sponsored "enterprise" securities. This would conform the language in the rule to the terminology commonly used in the marketplace. This change would be reflected in the list of permitted investments (paragraph (a)(1)(iii)), the rating requirements (paragraph

[35] Rule 1.26 addresses the treatment of instruments purchased with customer funds, but does not address the treatment of cash received by an FCM or DCO pursuant to a repo. The Commission believes that it is not necessary to specify in Rule 1.26 that cash acquired in exchange for securities under a repo must be held in a customer segregated cash account because this requirement is clear from the language of Section 4d(a)(2) of the Act.

[36] The Commission notes that with respect to the in-house transactions discussed in Section II.D. of this release, proposed Rule 1.25(e)(5)(iii) specifically provides that securities transferred to the customer segregated account as a result of the transaction must be held in a safekeeping account with a bank, a DCO, or the Depository Trust Company in an account that complies with the requirements of Rule 1.26.

[37] 33 FR 14455 (Sept. 26, 1968).

[38] 46 FR 33312 (June 29, 1981).

[39] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[40] *See* Section 5b of the Act, 7 U.S.C. 7a–1. *See also* Section 1a(9) of the Act, 7 U.S.C. 1a(9) (defining the term "derivatives clearing organization").

[41] *See* Section II.D. of this release.

(b)(2)(i)(B)), and the concentration limits (paragraph (b)(4)(i)(B)).

10. Conforming Terminology for "Futures Commission Merchant"

The Commission is proposing a technical amendment to Rule 1.25 to substitute the term "futures commission merchant" for the acronym, "FCM," as used in paragraph (c)(3). This would provide conformity in the use of the term futures commission merchant throughout the rule.

11. Clarifying the Meaning of "NRSRO"

Rule 1.25(b)(2) sets forth the rating requirements for permitted investments. The rule refers to ratings by an "NRSRO," the acronym for a "nationally recognized statistical rating organization." The Commission proposes to amend paragraph (b)(2)(i) to formally set forth the acronym as a defined term and to cross-reference the definition of that term contained in SEC Rule 2a–7.

III. Time to Maturity—Treasury Portfolio

Rule 1.25(b)(5) limits the dollar-weighted average of the time to maturity for permitted investments to no longer than 24 months. In expanding the range of permitted investments in December 2000, the Commission added this requirement as a means for addressing the greater market risk associated with longer-term and fixed rate instruments.

In June 2003, the Commission requested comment on the applicability of time-to-maturity requirements for an FCM that invests solely in obligations of the U.S. Treasury. It had been suggested that, because Treasury securities do not pose the same credit risks as other permitted investments, the time-to-maturity limitation should not apply. The Commission requested comment specifically on whether an alternate safeguard to limit risk, such as appropriate haircuts, would be more meaningful than the time-to-maturity requirement of Rule 1.25(b)(5).

Both the FIA and NFA supported the elimination of the time-to-maturity requirement for a portfolio of securities consisting solely of Treasury instruments. The FIA observed that, prior to the adoption of the December 2000 amendments to Rule 1.25, an FCM could invest customer money exclusively in Treasury securities without regard to the dollar-weighted time to maturity of such instruments. Acknowledging that a portfolio consisting solely of long-dated Treasury instruments is not without (market) risk, the FIA concluded that these risks are addressed by the Commission's minimum financial requirements, pursuant to which the haircuts on Treasury instruments increase as the time to maturity increases.[42] However, the Commission believes that a situation in which an FCM would have to turn to its own capital to meet its obligations to a clearing organization or customers is far less desirable than one in which an FCM is able to quickly convert assets acquired with customer funds into cash at a predictable value.

The NFA, while noting that Treasury instruments do not pose the same (credit) risks as other permitted investments, stated its belief that these instruments should be subject to haircuts. However, the introduction of haircut requirements into the segregation calculations would be unprecedented, could involve substantial operational challenges or costs for FCMs, and has not otherwise been proposed or determined to be appropriate.

The Commission believes that the time-to-maturity requirement added by the December 2000 amendments remains an important constraint on the greater market risk inherent with longer-term and fixed rate instruments in a portfolio of customer funds. Rule 1.25(b)(5) requires the calculation of portfolio time-to-maturity as that average is computed pursuant to SEC Rule 2a–7 for MMMFs.[43] It should be noted that this calculation addresses floating rate government securities and variable rate government securities that are adjusted at least every two years by deeming the time to maturity for such instruments to be, respectively, either one day or the time remaining to the next variable rate adjustment.[44] The Commission believes this approach properly considers the lower relative price sensitivities of short-term versus long-term instruments and adjustable rate (floating or variable) versus fixed rate instruments.

Accordingly, the Commission continues to believe that application of this requirement to all portfolios, including those consisting solely of Treasuries or other government securities, does not unduly or improperly restrict an FCM's investment flexibility under Rule 1.25. Thus, the Commission has determined that it will not propose any changes to its time-to-maturity requirement for portfolios consisting solely of Treasury securities. The Commission would be pleased to receive comments on this decision from any interested persons.

IV. Section 4(c)

Section 4(c) of the Act[45] provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission, by rule, regulation or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act other than Section 2(a)(1)(C)(ii) or (D), if the Commission determines that the exemption would be consistent with the public interest.

The proposed rules would be promulgated under Section 4d(a)(2) of the Act,[46] which governs investment of customer funds. Section 4d(a)(2) provides that customer money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States. It further provides that such investments must be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

The Commission proposes to expand the range of instruments in which FCMs may invest customer funds beyond those listed in Section 4d(a)(2) of the Act (*i.e.*, securities with embedded derivatives and MMMFs rated below the highest rating of an NRSRO), to enhance the yield available to FCMs, DCOs, and their customers without compromising the safety of customer funds. These proposed rules should enable FCMs and DCOs to remain competitive globally and domestically, while maintaining safeguards against systemic risk.

In light of the foregoing, the Commission believes that the adoption of the proposed rules regarding the expansion of permitted instruments for the investment of customer funds would promote responsible economic and financial innovation and fair competition, and would be consistent with the "public interest," as that term is used in Section 4(c) of the Act.

The Commission solicits public comment on whether the proposed rules

[42] *See* 17 CFR 1.17(c)(5)(v).

[43] *See* 17 CFR 270.2a–7.

[44] *See* discussion of the terms "floating rate security" and "variable rate security" in Section II.B.3. of this release.

[45] 7 U.S.C. 6(c).

[46] 7 U.S.C. 6d(a)(2).

satisfy the requirements for exemption under Section 4(c) of the Act.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[47] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. The rule amendments adopted herein will affect FCMs and DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[48] The Commission has previously determined that registered FCMs[49] and DCOs[50] are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Acting Chairman, on behalf of the Commission, certifies that the proposed rules 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") 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. The proposed rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these proposed rule amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Costs and Benefits of the Proposed Rules

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or determine whether the benefits of the rule outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations 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 Commission has evaluated the costs and benefits of the proposed rules in light of the specific considerations identified in Section 15(a) of the Act, as follows:

1. Protection of market participants and the public. The proposed rules facilitate greater capital efficiency for FCMs and DCOs, while protecting customers by establishing prudent standards for investment of customer funds. Several of the proposed amendments narrow and refine earlier standards based on industry and Commission experience since the December 2000 rulemaking in which Rule 1.25 was substantially revised and expanded. In this regard, for example, the proposed amendments relating to the mandatory registration requirement for MMMFs and auditability standard for investment records establish stricter standards. Similarly, proposed amendments that expand investment opportunities for FCMs and DCOs, such as those permitting investment in instruments with embedded derivatives, carefully circumscribe the activity in order to protect the customer segregated account.

2. Efficiency, competitiveness, and financial integrity of futures markets. The proposed rules will facilitate greater efficiency and competitiveness for FCMs and DCOs, but they will not affect the efficiency and competitiveness of futures markets. The proposed amendments will not affect the financial integrity of futures markets.

3. Price discovery. The proposed amendments will not affect price discovery.

4. Sound risk management practices. The proposed amendments impose sound risk management practices upon FCMs and DCOs that invest customer funds under the rules. They balance the need for investment flexibility with the need to preserve customer funds. For example, while proposing to permit FCM/BDs to engage in in-house transactions, the Commission sets forth specific requirements for such transactions. These include standards relating to the type of securities that may be transferred to the customer segregated account, treatment of those securities when held in the account, and procedures for effecting transactions. Proposed requirements are designed to ensure that at no time will in-house transactions cause the customer segregated account to fall below a sufficient level. Certain other proposed amendments, such as the registration requirement for MMMFs and clarification as to mandatory next-day redemption and payment for MMMF interests, strengthen risk management standards that are already in place.

5. Other public considerations. The proposed amendments reflect industry and Commission experience with Rule 1.25 since the rule was expanded in December 2000. They provide FCMs and DCOs with greater flexibility in making investments with customer funds, while strengthening the rules that protect the safety of such funds and preserve the rights of customers. For example, the proposed amendments governing in-house transactions provide FCM/BDs with an efficient and cost-effective method for maximizing investment opportunities within the confines of strict risk management requirements. Similarly, the proposed amendments expand the range of investments to include certain instruments with embedded derivatives and MMMFs of any rating, and enable FCMs and DCOs to consider a broader range of investment possibilities within prescribed limitations.

The proposed amendments are expected to enhance the ability of FCMs and DCOs to earn revenue from the investment of customer funds, while maintaining safeguards against systemic risk. FCMs and DCOs choosing to make such investments will bear all costs associated with their investments.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to propose the rules and rule amendments set forth below. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit, with their comment letters, any data that quantifies the costs and benefits of the proposal.

Lists of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, in particular, Sections 4d, 4(c), and 8a(5) thereof, 7 U.S.C. 6d, 6(c) and 12a(5), respectively, the Commission hereby proposes to amend Chapter I of Title 17

[47] 5 U.S.C. 601 *et seq.*

[48] 47 FR 18618 (Apr. 30, 1982).

[49] *Id.* at 18619.

[50] 66 FR 45604, 45609 (Aug. 29, 2001).

of the Code of Federal Regulations 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 Public Law 106–554, 114 Stat. 2763 (2000).

2. Section 1.25 is proposed to be revised to read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a derivatives clearing organization may invest customer money in the following instruments (permitted investments):

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision thereof (municipal securities);

(iii) General obligations issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation;

(v) Commercial paper;

(vi) Corporate notes or bonds;

(vii) General obligations of a sovereign nation; and

(viii) Interests in money market mutual funds.

(2)(i) In addition, a futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the instruments, in accordance with the provisions of paragraph (d) of this section.

(ii) A futures commission merchant or a derivatives clearing organization may sell securities deposited by customers as margin pursuant to agreements to repurchase subject to the following:

(A) Securities subject to such repurchase agreements must be "readily marketable" as defined in § 240.15c3–1 of this title.

(B) Securities subject to such repurchase agreements must not be "specifically identifiable property" as defined in § 190.01(kk) of this chapter.

(C) The terms and conditions of such an agreement to repurchase must be in accordance with the provisions of paragraph (d) of this section.

(D) Upon the default by a counterparty to a repurchase agreement, the futures commission merchant or derivatives clearing organization shall act promptly to ensure that the default does not result in any direct or indirect cost or expense to the customer.

(3) In addition, subject to the provisions of paragraph (e) of this section, a futures commission merchant that is also registered with the Securities and Exchange Commission as a securities broker or dealer pursuant to section 15(b)(1) of the Securities and Exchange Act of 1934 may enter into transactions in which:

(i) Customer money is exchanged for securities that are permitted investments and are held by the futures commission merchant in connection with its securities broker or dealer activities;

(ii) Securities deposited by customers as margin are exchanged for securities that are permitted investments and are held by the futures commission merchant in connection with its securities broker or dealer activities; or

(iii) Securities deposited by customers as margin are exchanged for cash that is held by the futures commission merchant in connection with its securities broker or dealer activities.

(b) *General terms and conditions.* A futures commission merchant or a derivatives clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements:

(1) *Marketability.* Except for interests in money market mutual funds, investments must be "readily marketable" as defined in § 240.15c3–1 of this title.

(2) *Ratings.* (i) *Initial requirement.* Instruments that are required to be rated by this section must be rated by a nationally recognized statistical rating organization (NRSRO), as that term is defined in § 270.2a–7 of this title. For an investment to qualify as a permitted investment, ratings are required as follows:

(A) U.S. government securities and money market mutual funds need not be rated;

(B) Municipal securities, government sponsored enterprise securities, commercial paper, and corporate notes or bonds, except notes or bonds that are asset-backed, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO;

(C) Corporate notes or bonds that are asset-backed must have the highest ratings of an NRSRO;

(D) Sovereign debt must be rated in the highest category by at least one NRSRO; and

(E) With respect to certificates of deposit, the commercial paper or long-term debt instrument of the issuer of a certificate of deposit or, if the issuer is part of a holding company system, its holding company's commercial paper or long-term debt instrument, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO.

(ii) *Effect of downgrade.* If an NRSRO lowers the rating of an instrument that was previously a permitted investment on the basis of that rating to below the minimum rating required under this section, the value of the instrument recognized for segregation purposes will be the lesser of:

(A) The current market value of the instrument; or

(B) The market value of the instrument on the business day preceding the downgrade, reduced by 20 percent of that value for each business day that has elapsed since the downgrade.

(3) *Restrictions on instrument features.* (i) With the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, except as follows:

(A) The issuer of an instrument otherwise permitted by this section may have an option to call, in whole or in part, at par, the principal amount of the instrument before its stated maturity date; or

(B) An instrument that meets the requirements of paragraph (b)(3)(iv) of this section may provide for a cap, floor, or collar on the interest paid; *provided, however,* that the terms of such instrument obligate the issuer to repay the principal amount of the instrument at not less than par value upon maturity.

(ii) No instrument may contain interest-only payment features.

(iii) No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark except as provided in paragraph (b)(3)(iv) of this section, and it may not otherwise constitute a derivative instrument.

(iv) (A) Adjustable rate securities are permitted, subject to the following requirements:

(*1*) The interest payments on variable rate securities must correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, or the one-month or three-month LIBOR rate;

(*2*) The interest payment, in any period, on floating rate securities must be determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

(*3*) Benchmark rates must be expressed in the same currency as the adjustable rate securities that reference them; and

(*4*) No interest payment on an adjustable rate security, in any period, can be a negative amount.

(B) For purposes of this paragraph, the following definitions shall apply:

(*1*) The term *adjustable rate security* means, a floating rate security, a variable rate security, or both.

(*2*) The term *floating rate security* means a security, the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(*3*) The term *variable rate security* means a security, the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(v) Certificates of deposit, if negotiable, must be able to be liquidated within one business day or, if not negotiable, must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.

(4) *Concentration.* (i) *Direct investments.* (A) U.S. Government securities and money market mutual funds shall not be subject to a concentration limit or other limitation.

(B) Securities of any single issuer of government sponsored enterprise securities held by a futures commission merchant or derivatives clearing organization may not exceed 25 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Securities of any single issuer of municipal securities, certificates of deposit, commercial paper, or corporate notes or bonds held by a futures commission merchant or derivatives clearing organization may not exceed 5 percent of total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(D) Sovereign debt is subject to the following limits: A futures commission merchant may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; a derivatives clearing organization may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing member futures commission merchants denominated in that country's currency.

(ii) *Repurchase agreements.* For purposes of determining compliance with the concentration limits set forth in this section, securities sold by a futures commission merchant or derivatives clearing organization subject to agreements to repurchase shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(iii) *Reverse repurchase agreements.* For purposes of determining compliance with the concentration limits set forth in this section, securities purchased by a futures commission merchant or derivatives clearing organization subject to agreements to resell shall be combined with securities held by the futures commission merchant or derivatives clearing organization as direct investments.

(iv) *Transactions under paragraph (a)(3).* For purposes of determining compliance with the concentration limits set forth in this section, securities transferred to a customer segregated account pursuant to paragraphs (a)(3)(i) or (a)(3)(ii) of this section shall be combined with securities held by the futures commission merchant as direct investments.

(v) *Treatment of securities issued by affiliates.* For purposes of determining compliance with the concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(6) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted money market mutual fund is not deemed to be a security issued by its sponsoring entity.

(vi) *Treatment of customer-owned securities.* For purposes of determining compliance with the concentration limits set forth in this section, securities owned by the customers of a futures commission merchant and posted as margin collateral are not included in total assets held in segregation by the futures commission merchant, and securities posted by a futures commission merchant with a derivatives clearing organization are not included in total assets held in segregation by the derivatives clearing organization.

(5) *Time-to-maturity.* (i) Except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a–7 of this title, may not exceed 24 months.

(ii) For purposes of determining the time-to-maturity of the portfolio, an instrument that is set forth in paragraphs (a)(1)(i) through (vii) of this section may be treated as having a one-day time-to-maturity if the following terms and conditions are satisfied:

(A) The instrument is deposited solely on an overnight basis with a derivatives clearing organization pursuant to the terms and conditions of a collateral management program that has become effective in accordance with § 39.4 of this chapter;

(B) The instrument is one that the futures commission merchant owns or has an unqualified right to pledge, is not subject to any lien, and is deposited by the futures commission merchant into a segregated account at a derivatives clearing organization;

(C) The derivatives clearing organization prices the instrument each day based on the current mark-to-market value; and

(D) The derivatives clearing organization reduces the assigned value of the instrument each day by a haircut of at least 2 percent.

(6) *Investments in instruments issued by affiliates.* (i) A futures commission merchant shall not invest customer funds in obligations of an entity affiliated with the futures commission merchant, and a derivatives clearing organization shall not invest customer funds in obligations of an entity affiliated with the derivatives clearing organization. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(ii) A futures commission merchant or derivatives clearing organization may invest customer funds in a fund affiliated with that futures commission merchant or derivatives clearing organization.

(7) *Recordkeeping.* A futures commission merchant and a derivatives clearing organization shall prepare and maintain a record that will show for each business day with respect to each type of investment made pursuant to this section, the following information:

(i) The type of instruments in which customer funds have been invested;

(ii) The original cost of the instruments; and

(iii) The current market value of the instruments.

(c) *Money market mutual funds.* The following provisions will apply to the investment of customer funds in money market mutual funds (the fund).

(1) The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a money market fund, in accordance with § 270.2a–7 of this title.

(2) The fund must be sponsored by a federally-regulated financial institution, a bank as defined in section 3(a)(5) of the Securities Exchange Act of 1934, an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation.

(3) A futures commission merchant or derivatives clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with § 1.31 and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the futures commission merchant or derivatives clearing organization in accordance with § 1.26(a). If the futures commission merchant or the derivatives clearing organization holds its shares of the fund with the fund's shareholder servicing agent, the sponsor of the fund and the fund itself are required to provide the acknowledgment letter required by § 1.26.

(4) The net asset value of the fund must be computed by 9 a.m. of the business day following each business day and made available to the futures commission merchant or derivatives clearing organization by that time.

(5) (i) General requirement for redemption of interests. A fund shall be legally obligated to redeem an interest and to make payment in satisfaction thereof by the business day following a redemption request, and the futures commission merchant or derivatives clearing organization shall retain documentation demonstrating compliance with this requirement.

(ii) Exception. A fund may provide for the postponement of redemption and payment due to any of the following circumstances:

(A) Non-routine closure of the Fedwire or applicable Federal Reserve Banks;

(B) Non-routine closure of the New York Stock Exchange or general market conditions leading to a broad restriction of trading on the New York Stock Exchange;

(C) Declaration of a market emergency by the Securities and Exchange Commission; or

(D) Emergency conditions set forth in section 22(e) of the Investment Company Act of 1940.

(6) The agreement pursuant to which the futures commission merchant or derivatives clearing organization has acquired and is holding its interest in a fund must contain no provision that would prevent the pledging or transferring of shares.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the securities (agreements to repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

(1) The securities are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(2) Counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986.

(3) The transaction is executed in compliance with the concentration limit requirements applicable to the securities transferred to the customer segregated custodial account in connection with the agreements to repurchase referred to in paragraphs (b)(4)(ii) and (iii) of this section.

(4) The transaction is made pursuant to a written agreement signed by the parties to the agreement, which is consistent with the conditions set forth in paragraphs (d)(1) through (d)(12) of this section and which states that the parties thereto intend the transaction to be treated as a purchase and sale of securities.

(5) The term of the agreement is no more than one business day, or reversal of the transaction is possible on demand.

(6) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

(7) The futures commission merchant or the derivatives clearing organization may not use securities received under the agreement in another similar transaction and may not otherwise hypothecate or pledge such securities, except securities may be pledged on behalf of customers at another futures commission merchant or derivatives clearing organization. Substitution of securities is allowed, *provided, however,* that:

(i) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(ii) Substitution is made on a "delivery versus delivery" basis; and

(iii) The market value of the substituted securities is at least equal to that of the original securities.

(8) The transfer of securities to the customer segregated custodial account is made on a delivery versus payment basis in immediately available funds. The transfer of funds to the customer segregated cash account is made on a payment versus delivery basis. The transfer is not recognized as accomplished until the funds and/or securities are actually received by the custodian of the futures commission merchant's or derivatives clearing organization's customer funds or securities purchased on behalf of customers. The transfer or credit of securities covered by the agreement to the futures commission merchant's or derivatives clearing organization's customer segregated custodial account is made simultaneously with the disbursement of funds from the futures commission merchant's or derivatives clearing organization's customer segregated cash account at the custodian bank. On the sale or resale of securities, the futures commission merchant's or derivatives clearing organization's

customer segregated cash account at the custodian bank must receive same-day funds credited to such segregated account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(9) A written confirmation to the futures commission merchant or derivatives clearing organization specifying the terms of the agreement and a safekeeping receipt are issued immediately upon entering into the transaction and a confirmation to the futures commission merchant or derivatives clearing organization is issued once the transaction is reversed.

(10) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

(11) An actual transfer of securities to the customer segregated custodial account by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as "customer property."

(12) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or derivatives clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or derivatives clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) *Transactions by futures commission merchants that are also registered securities brokers or dealers.* A futures commission merchant that is also registered with the Securities and Exchange Commission as a securities broker or dealer pursuant to section 15(b)(1) of the Securities and Exchange Act of 1934 may enter into transactions pursuant to paragraph (a)(3) of this section, subject to the following requirements:

(1) The futures commission merchant, in connection with its securities broker or dealer activities, owns or has the unqualified right to pledge the securities that are exchanged for customer money or securities held in the customer segregated account.

(2) The transaction can be reversed within one business day or upon demand.

(3) Securities transferred from the customer segregated account and securities transferred to the customer segregated account as a result of the transaction are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(4) Securities deposited by customers as margin and transferred from the customer segregated account as a result of the transaction are subject to the following requirements:

(i) The securities are "readily marketable" as defined in § 240.15c3–1 of this title.

(ii) The securities are not "specifically identifiable property" as defined in § 190.01(kk) of this chapter.

(5) Securities transferred to the customer segregated account as a result of the transaction are subject to the following requirements:

(i) The securities are priced each day based on the current mark-to-market value.

(ii) The securities are subject to the concentration limit requirements set forth in paragraph (b)(4)(iv) of this section.

(iii) The securities are held in a safekeeping account with a bank, as referred to in paragraph (d)(2) of this section, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

(iv) The securities may not be used in another similar transaction and may not otherwise be hypothecated or pledged, except such securities may be pledged on behalf of customers at another futures commission merchant or derivatives clearing organization. Substitution of securities is allowed, *provided, however,* that:

(A) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(B) Substitution is made on a "delivery versus delivery" basis; and

(C) The market value of the substituted securities is at least equal to that of the original securities.

(6) The transactions are carried out in accordance with the following procedures:

(i) With respect to transactions under paragraph (a)(3)(i) of this section, the transfer of securities to the customer segregated custodial account shall be made simultaneously with the transfer of money from the customer segregated cash account. In no event shall money held in the customer segregated cash account be disbursed prior to the transfer of securities to the customer segregated custodial account. Any transfer of securities to the customer segregated custodial account shall not be recognized as accomplished until the securities are actually received by the custodian of such account. Upon unwinding of the transaction, the customer segregated cash account shall receive same-day funds credited to such account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(ii) With respect to transactions under paragraph (a)(3)(ii) of this section, the transfer of securities to the customer segregated custodial account shall be made simultaneously with the transfer of securities from the customer segregated custodial account. In no event shall securities held in the customer segregated custodial account be released prior to the transfer of securities to that account. Any transfer of securities to the customer segregated custodial account shall not be recognized as accomplished until the securities are actually received by the custodian of the customer segregated custodial account. Upon unwinding of the transaction, the customer segregated custodial account shall receive the securities simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(iii) With respect to transactions under paragraph (a)(3)(iii) of this section, the transfer of money to the customer segregated cash account shall be made simultaneously with the transfer of securities from the customer segregated custodial account. In no event shall securities held in the customer segregated custodial account be released prior to the transfer of money to the customer segregated cash account. Any transfer of money to the customer segregated cash account shall not be recognized as accomplished until the money is actually received by the custodian of the customer segregated cash account. Upon unwinding of the transaction, the customer segregated custodial account shall receive the securities simultaneously with the disbursement of money from the customer segregated cash account.

(7) The futures commission merchant maintains all books and records with respect to the transactions in accordance

with §§ 1.25, 1.27, 1.31, and 1.36 and the applicable rules and regulations of the Securities and Exchange Commission.

(8) An actual transfer of securities by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities transferred to the customer segregated account are reflected as "customer property."

(9) For purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, securities transferred to the customer segregated account are considered to be customer funds until the customer money or securities for which they were exchanged are transferred back to the customer segregated account. In the event of the bankruptcy of the futures commission merchant, any securities exchanged for customer funds and held in the customer segregated account may be immediately transferred.

(10) In the event the futures commission merchant is unable to return to the customer any customer-deposited securities exchanged pursuant to paragraphs (a)(3)(ii) or (a)(3)(iii) of this section, the futures commission merchant shall act promptly to ensure that such inability does not result in any direct or indirect cost or expense to the customer.

(f) *Deposit of firm-owned securities into segregation.* A futures commission merchant shall not be prohibited from directly depositing unencumbered securities of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; provided, however, that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

3. Section 1.27 is proposed to be amended as follows:

A. By adding the word "derivatives" before the term "clearing organization" in paragraphs (a) and (b);

B. By adding the phrase "or current market value of securities" after the phrase "The amount of money" in paragraph (a)(3);

C. By removing the word "and" at the end of paragraph (a)(6);

D. By removing the period at the end of paragraph (a)(7) and adding "; and" in its place; and

E. By adding paragraph (a)(8) to read as follows:

§ 1.27 Record of investments.

(a) * * *

(8) Daily valuation for each instrument and documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable auditors to validate the valuation and verify the accuracy of input information used in the valuation to external sources for any instrument.

* * * * *

Issued in Washington, DC, on January 27, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–2000 Filed 2–2–05; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[OAR 2003–0079, FRL–7867–1]

RIN 2060–AJ99

Implementation of the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The EPA is requesting comment on two issues raised in a petition for reconsideration action of EPA's rule to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). In addition, EPA is proposing to clarify two aspects of the implementation rule. On April 30, 2004, EPA issued a final rule addressing key elements of the program to implement the 8-hour ozone NAAQS. Subsequently, on June 29, 2004 and September 24, 2004, three different parties each filed a petition for reconsideration of certain specified aspects of the final rule. By letter dated September 23, 2004, EPA granted reconsideration of three issues raised in the petition for reconsideration filed by Earthjustice on behalf of several environmental organizations. Today, we are providing additional information and soliciting comment on two of the issues on which we granted reconsideration. The issues that we are addressing today are whether the section 185 fee provisions apply once the 1-hour NAAQS is revoked and the timing for determining what is an "applicable requirement" for purposes of anti-backsliding once the 1-hour NAAQS is revoked. We will shortly address the issue of new source review (NSR) anti-backsliding in a separate action. We are requesting public comment on the issues discussed in this action, which are described in section III of the Supplementary Information section of this preamble. We plan to issue a final decision on these issues no later than May 20, 2005.

We are also proposing to revise the implementation rule in two respects. First we are proposing to find that contingency measures for failure to make reasonable further progress or attain by the applicable attainment date for the 1-hour ozone standard are no longer required of an area after revocation of that standard. Second, although § 51.905 of the rule provided that areas designated nonattainment for the 1-hour NAAQS at the time of designation as nonattainment for the 8-hour NAAQS remain subject to any outstanding 1-hour attainment demonstration requirement, we failed to list the attainment demonstration as an "applicable requirement." We are proposing to revise the definition of "applicable requirement" to include the 1-hour attainment demonstration.

We are seeking comment only on the issues specifically identified in this document. We do not intend to respond to comments addressing other issues.

DATES: Comments must be received on or before March 21, 2005. A public hearing will be held on February 18, 2005 and will convene at 9 a.m. and end at 2 p.m. Because of the need to resolve the issues in this document in a timely manner, EPA will not grant requests for extensions of the public comment period. For additional information on the public hearing, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0079, by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments. Attention E-Docket No. OAR–2003–0079.
- Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's

electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments. Attention E-Docket No. OAR–2003–0079.

- E-mail: *A-and-R-Docket@epa.gov*. Attention E-Docket No. OAR–2003–0079.
- Fax: The fax number of the Air Docket is (202) 566–1741. Attention E-Docket No. OAR–2003–0079.
- Mail: EPA Docket Center, EPA West (Air Docket), Attention E-Docket No. OAR–2003–0079, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center (Air Docket), Attention E-Docket No. OAR–2003–0079, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108; Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0079. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1742 and the fax number is (202) 566–1741.

Public Hearing. A public hearing will be held on February 18, 2005 from 9 a.m. to 2 p.m. at the Environmental Protection Agency, Building C, Room C114, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Persons wishing to speak at the public hearing need to contact: Ms. Kara Syvertsen, E.H. Pechan, at telephone number (919) 493–3144, extension 120 or by e-mail at *kara.syvertsen@pechan.com*. Oral testimony may be limited to 3 to 5 minutes depending on the number of people who sign up to speak. Commenters may also supplement their oral testimony with written comments. The hearing will be limited to the subject matter of this document. The public hearing schedule, including the list of speakers, will be posted on EPA's Web site at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr*. A verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the EPA Docket Center (Air Docket) at the address listed above for inspection of documents.

FOR FURTHER INFORMATION CONTACT: Ms. Denise M. Gerth, Office of Air Quality Planning and Standards, Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550 or by e-mail at *gerth.denise@epa.gov* or Mr. John Silvasi, Office of Air Quality Planning and Standards, Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5666 or by e-mail at *silvasi.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

Outline

II. Background

On July 18, 1997, we promulgated a revised ozone NAAQS of 0.08 parts per million (ppm) as measured over an 8-hour period (62 FR 38856). At the time, we believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the Clean Air Act (CAA) rather than the more detailed requirements of subpart 2. Various industry groups and States challenged EPA's final rule promulgating the 8-hour NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.[1] In May 1999, the DC Circuit remanded the ozone standard to EPA on the basis that our interpretation of the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc.* v. *EPA,* 175 F.3d 1027, 1034–1040 (ATA I) *aff'd,* 195 F.3d 4 (D.C. Cir., 1999) (ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2. *Id.* at 1048–1050.[2] We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. *Whitman* v. *American Trucking Assoc.,* 121 S.Ct. 903, 911–914 (2001) (Whitman). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation under subpart 2, but determined that EPA's approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* at 916–919. Specifically, the Court noted that the CAA funneled areas with specific design values into subpart 2. The Court also stated that we could not ignore the provisions of subpart 2 that "eliminate[] regulatory discretion" allowed by subpart 1, *id.* at 918, but also identified several portions of the CAA's classification scheme under subpart 2 that are "ill-fitted" to the revised standard. The Court remanded the implementation strategy to EPA to develop a reasonable approach for implementation. *Id.*

Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the Supreme Court remanded the case to the D.C. Circuit for disposition of the remaining issues. *Id.* at 919. On March 26, 2002, the D.C. Circuit Court rejected all of the remaining challenges to the ozone and fine particle ($PM_{2.5}$) standards. *American Trucking Assoc.* v. *EPA,* 283 F.3d 355 (D.C. Cir., 2002) (ATA III). With that ruling, EPA began to move forward with programs to protect Americans from the wide variety of health problems, such as respiratory illnesses in elderly persons and premature death, with which these air pollutants have been associated.

On June 2, 2003 (68 FR 32802), we proposed various options regarding the transition from the 1-hour to the 8-hour NAAQS and the provisions that would govern implementation of the 8-hour NAAQS. On August 6, 2003 (68 FR 46536), EPA published a notice of availability of draft regulatory text to implement the 8-hour NAAQS. In the summer of 2003, we held three public hearings to solicit comment on the proposal. Because numerous commenters recommended alternatives to or modifications of the proposed classification schemes, we reopened the public comment period on October 21, 2003 (68 FR 60054) to solicit comment on alternative classification approaches.

On April 30, 2004 (69 FR 23951), we issued a final rule (Phase 1 Rule), which covered some, but not all, of the program elements in the proposed rule. The Phase 1 Rule covered the following key implementation issues: classifications for the 8-hour NAAQS; revocation of the 1-hour NAAQS (*i.e.*, when the 1-hour NAAQS will no longer apply); how anti-backsliding principles will ensure continued progress in achieving ozone reductions as areas transition to implementation of the 8-hour ozone NAAQS; attainment dates for the 8-hour ozone NAAQS; and the timing of emissions reductions needed for attainment of the 8-hour ozone NAAQS. The EPA plans to issue shortly a final rule addressing the remaining issues from the June 2003 proposal (Phase 2 Rule). This final rule will provide EPA's interpretation of many of the planning and control obligations under sections 172 and 182 of the CAA that apply to nonattainment areas for purposes of attaining the 8-hour NAAQS. These include, among other things, reasonable further progress (RFP), reasonably available control technology, attainment demonstrations, maintenance plans and NSR.

Following publication of the April 30, 2004 final rule, the Administrator received three petitions, pursuant to section 307(d)(7)(B) of the CAA requesting reconsideration of a number of aspects of the final rule.[3] On September 23, 2004, we granted reconsideration of three issues raised in the Earthjustice Petition. The purpose of today's action is to initiate the process to address two of these three issues: (1) The provision that section 185 fees would no longer apply for a failure to attain the 1-hour NAAQS once the 1-hour NAAQS is revoked; and (2) the timing for determination of what is an "applicable requirement." The NSR anti-backsliding issues will be addressed in a separate action.

On January 10, 2005, we granted reconsideration of the overwhelming transport classification issue raised by Earthjustice in their Petition. At the same time, we denied reconsideration of the issues they raised in their Petition dealing with the applicability of reformulated gasoline when the 1-hour NAAQS is revoked and future 8-hour ozone redesignations to nonattainment. In the near future, we will take action on the overwhelming transport classification issue.

We are continuing to review the issues raised in the National Petrochemical and Refiners Association and American Petroleum Institute Petitions. Copies of the Petitions for Reconsideration and actions EPA has taken regarding the Petitions may be found at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.*

We are proposing to find that contingency measures for failure to make RFP or attain by the applicable attainment date for the 1-hour ozone standard are no longer required of an area after revocation of that standard. We are also proposing to revise the definition of "applicable requirement" in § 51.900(f) to include the 1-hour attainment demonstration. For more detailed background information, the reader should refer to the Phase 1 Rule (April 30, 2004; 69 FR 23956).

[1] On July 18, 1997, we also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. Issues regarding implementation of the PM NAAQS were not raised.

[2] The Court addressed a number of other issues, which are not relevant here.

[3] The petitions for reconsideration of the Phase 1 Rule were filed by: (1) Earthjustice on behalf of the American Lung Association, Environmental Defense, Natural Resources Defense Council, Sierra Club, Clean Air Task Force, Conservation Law Foundation, and Southern Alliance for Clean Energy; (2) the National Petrochemical and Refiners Association and the National Association of Manufacturers; and (3) the American Petroleum Institute, American Chemistry Council, American Iron and Steel Institute, National Association of Manufacturers and the U.S. Chamber of Commerce.

III. Today's Action

A. Reconsideration of the Portion of the Phase 1 Rule Addressing the Continued Applicability of the Section 185 Fee Provision for Areas That Fail To Attain the 1-Hour NAAQS

1. *Background.* The Phase 1 Rule provided that once the 1-hour standard is revoked for an area, certain requirements would no longer apply. For example, we stated that: (1) EPA will no longer make findings of failure to attain the 1-hour NAAQS; (2) EPA will no longer reclassify areas to a higher classification for the 1-hour NAAQS based on a finding of failure to attain; and (3) States are no longer obligated to impose fees under sections 181(b)(4) and 185 of the CAA ("Fee Provisions") in severe or extreme areas that fail to attain the 1-hour standard by the area's 1-hour attainment date (69 FR 23984).

The petitioners claim that we did not include the issue of whether States would be required to impose fees under the Fee Provisions in the portion of the proposed rule discussing which obligations would no longer apply once the 1-hour standard is revoked. Thus, they claim they did not have an opportunity to comment on this portion of the final rule.

We agree with the Petitions that we did not specifically state in our proposed rule that after the effective date of the revocation of the 1-hour NAAQS, States would no longer be obligated to impose fees under the Fee Provisions in severe and extreme areas that fail to attain the 1-hour NAAQS by their 1-hour attainment date. For this reason, we are today requesting comments on whether States must impose fees in severe and extreme areas if an area fails to attain the 1-hour NAAQS by its 1-hour attainment date.

In the final rule, we explained that our interpretation was a logical extension of our proposal as the obligation to impose a fee is triggered by a finding of failure to attain. We also noted that our final rule regarding the Fee Provisions was consistent with appendix B of the June 2, 2003 proposal (68 FR 32866), which did not identify the section 185 fee provision as an applicable requirement.

For severe and extreme areas, the Fee Provisions operate in lieu of reclassification. And, in our proposal, we proposed that we would no longer be obligated to reclassify areas for the 1-hour NAAQS after that NAAQS was revoked. As with all of the requirements that we determined no longer apply, the Fee Provisions are linked to whether or not the area has met the 1-hour NAAQS, which the Agency determined in 1998 was no longer necessary to protect public health. Thus, for the Fee Provisions and the other requirements that we determined would no longer apply, we concluded in the Phase 1 Rule that areas should focus their resources on attainment of the 8-hour standard. We noted that it would be counterproductive to continue efforts linked to whether or not an area met the 1-hour standard after areas were designated for the 8-hour standard and had begun planning for the 8-hour standard.

2. *Request for Public Comments.* Today, we are soliciting comment on whether, once the 1-hour standard is revoked, the Fee Provisions should continue to apply if an area fails to attain the 1-hour standard by its 1-hour attainment date. We continue to believe, as stated in our final rule, that there is no basis for determining whether an area has met the 1-hour NAAQS once the 1-hour NAAQS has been revoked. Once the 1-hour NAAQS is revoked, there will not be an applicable 1-hour classification or an applicable 1-hour attainment date. Since there is no longer an applicable 1-hour attainment date, there cannot be a failure to meet such a date. Thus, the consequences that would apply based on such a failure would not be triggered.

B. Reconsideration of the Portion of the Phase 1 Rule Establishing the Time for Determining Which 1-Hour Obligations Remain Applicable Requirements

1. *Background.* Under the Phase 1 Rule, the 1-hour control measures that would continue to apply under the anti-backsliding portion of the rule are called "applicable requirements." The Phase 1 Rule provided that the "applicable requirements" would be those 1-hour control measures that applied in an area as of the date of signature of the Phase 1 Rule (*i.e.*, April 15, 2004).[4] In the June 2003 proposal, EPA had proposed that the applicable requirements would be those that applied as of the effective date of the 8-hour designations (*i.e.*, for most areas June 15, 2004). (June 2, 2003, 68 FR 32821). The draft regulatory text released for public comment in August 2003 defined the applicable requirements as those 1-hour requirements that applied as of the date of revocation of the 1-hour NAAQS (*i.e.*, for most areas, June 15, 2005). (*See e.g.*, 51.905(a) of Draft Regulatory Text.) The petitioners claim that since EPA did not propose the date of signature of the designation rule (*i.e.*, April 15, 2004) as the date for determining which 1-hour control measures would continue to apply, they did not have an opportunity to comment on this portion of the final rule.

We agree with the Earthjustice Petition that we did not propose that the applicable requirements be based on the time at which the Phase 1 Rule was signed, but rather proposed two options that were later in time—publication of the designation rule or revocation of the 1-hour NAAQS. Thus, we are reopening for comment the issue of what should be the date for determining the applicable requirements.

We believe it is important for areas to understand early in the process which requirements will remain in place. This is particularly true for areas with an outstanding attainment demonstration obligation. Our Phase 1 Rule provides that such areas can elect to submit a 5 percent plan or an early 8-hour attainment demonstration in lieu of the outstanding 1-hour State implementation plan (SIP) and that those alternative plans are due no later than 1 year after the effective date of 8-hour designations. Thus, States need to know early whether a 1-hour attainment SIP obligation remains in place so that they may develop and submit that SIP or one of the two alternatives. For that reason, we do not believe the date in the draft regulatory text—the date on which the 1-hour standard is revoked—is appropriate, as it would be the same date such SIPs are due.

2. *Request for Public Comments.* Today, we are soliciting public comment on what date should be used for the purpose of defining the applicable requirements. We are proposing to adopt, consistent with our June 2003 proposal, the effective date of the 8-hour designation (*i.e.*, for most areas June 15, 2004) as the date for determining which 1-hour control measures continue to apply in an area once the 1-hour standard is revoked. Under this approach, the 1-hour obligations that are applicable requirements in an area as of June 15, 2004 would continue to apply under the anti-backsliding provisions of the Phase 1 Rule. We believe that June 15, 2004 is more consistent with the other aspects of our implementation rule that are keyed to the effective date of the designations rather than the signature

[4] The Phase 1 Rule provides in § 51.900(f) that: "Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the areas's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment or unclassifiable..." (69 FR 23997). Phase 1 of the final rule to implement the 8-hour ozone NAAQS was signed by the Administrator on April 15, 2004.

date. In other words, we are proposing to define the "applicable requirements" as those that applied to an area for the area's 1-hour ozone classification under section 181(a)(1) of the CAA at the time of the effective date of the 8-hour designation for the area.

If we take final action to change the date for defining "applicable requirements" for purposes of anti-backsliding from April 15, 2004 to June 15, 2004, two areas will be affected by the change. Both of these areas were reclassified (bumped up) to a higher classification for the 1-hour NAAQS with an effective date after April 15, 2004, but before June 15, 2004. The first area, Beaumont/Port Arthur, Texas, was reclassified to serious with an attainment date as expeditiously as practicable but no later than November 15, 2005. The reclassification was effective on April 29, 2004 (69 FR 16483; March 30, 2004). The other area, San Joaquin Valley, California, requested a voluntary bump to extreme with an attainment date as expeditiously as practicable but no later than November 15, 2010. The bump up was effective on May 17, 2004 (69 FR 20550; April 16, 2004). These areas will have to implement the serious and extreme CAA requirements, respectively, for purposes of anti-backsliding if we change the date for determining which "applicable requirements" apply from April 15, 2004 to June 15, 2004.

In addition to being consistent with the trigger date for other obligations under the Phase 1 Rule, changing the date for determining "applicable requirements" to June 15, 2004 would ensure that these two areas meet obligations that were recently triggered. Beaumont was recently reclassified to serious based on its failure to attain the 1-hour NAAQS by its 1999 attainment date. Since 1999, Beaumont has continued to experience violations of the 1-hour NAAQS and is currently violating the 8-hour NAAQS with a 2001–2003 8-hour ozone design value of 0.091 ppm. The State of California requested that San Joaquin Valley be reclassified to extreme because the State and the San Joaquin Valley Unified Air Pollution Control District were unable to develop a SIP that demonstrated attainment by 2005 based on its severe-15 classification. California submitted a new 1-hour plan including a demonstration that the San Joaquin Valley area will meet rate of progress requirements for 2008 and attain the 1-hour NAAQS by no later than 2010, the extreme area deadline. The San Joaquin Valley area is classified as serious with respect to the 8-hour ozone NAAQS and has an 8-hour ozone design value of 0.115 ppm.

Based on this information, we believe these areas should implement the additional 1-hour requirements of the higher classifications to ensure continued progress toward reducing ambient ozone levels and meeting the 8-hour ozone standard.

C. Contingency Measures in SIPs for the 1-Hour Ozone Standard

1. *Background.* Section 172(c)(9) of the CAA requires that nonattainment area SIPs contain contingency measures that would be implemented if an area fails to attain the NAAQS or fails to make RFP toward attainment. The issue of what would happen to contingency measures that have been approved into an area's 1-hour ozone attainment SIP once the 1-hour NAAQS is revoked and whether areas that had not submitted contingency measures would still be required to do so was not expressly addressed in the proposed (68 FR 32802) or final Phase 1 Rule (69 FR 23951). Today, EPA is addressing the issue and requesting comments on our proposed approach.

Regarding contingency measures within maintenance plans under section 175A of the CAA, the Phase 1 Rule provided that areas with approved 1-hour maintenance plans could modify their maintenance plans to remove the obligation to implement contingency measures upon violation of the 1-hour NAAQS. The Phase 1 Rule also provided that such requirements would remain enforceable as part of the approved SIP until such time as we approved a SIP revision removing such obligations.

2. *Summary of Today's Proposal.* Today, we are proposing that sections 172(c)(9) and 182(c)(9) contingency measures, which are triggered upon a failure to attain the 1-hour standard or to meet reasonable progress milestones for the 1-hour standard, will no longer be required once the 1-hour NAAQS is revoked. This means that after revocation of the 1-hour standard, an area that has not submitted a 1-hour attainment demonstration or a specific 1-hour RFP SIP would no longer need to submit contingency measures in conjunction with those SIPs. Additionally, an area with approved 172 and 182 contingency measures could remove them from the SIP.

We believe that the contingency measures are linked to the other requirements that EPA determined would no longer apply once the 1-hour standard is revoked. After revocation of the 1-hour standard, we will no longer make findings that areas failed to attain or make progress towards the 1-hour NAAQS. We have previously concluded that these findings are no longer necessary since they are for a NAAQS that is no longer applicable. Similarly, since these contingency measures are only triggered by a finding that an area has failed to attain or make progress toward a NAAQS that no longer applies, findings that we will no longer be making, they will not be triggered. Therefore, we believe States should not be required to submit contingency measures with their 1-hour attainment demonstrations or 1-hour RFP SIPs. The basis for concluding that 1-hour contingency measures should no longer apply once the 1-hour standard is revoked is the same as the basis for concluding that the Fee Provisions should no longer apply once the 1-hour NAAQS is revoked.

D. Adding Attainment Demonstration to the List of "Applicable Requirements" in § 51.900(f)

1. *Background.* Most 1-hour ozone nonattainment areas have fully approved attainment demonstrations for the 1-hour NAAQS. Therefore, our rule focused on the few areas without approved attainment demonstrations either because the areas did not meet the CAA deadlines or because they were reclassified (bumped up) to a higher classification for failure to attain by their attainment date. In our final rule, we allowed States to choose among three options for meeting their unmet attainment demonstration obligations (69 FR 23975).

a. Submit a 1-hour attainment demonstration;

b. Submit, no later than 1 year after the effective date of the 8-hour designations, an early increment of progress plan toward the 8-hour NAAQS, which provides a 5 percent increment of reductions from the 2002 emissions baseline (NO_X and/or VOC); or

c. Submit an early 8-hour ozone attainment demonstration SIP 1 year after the effective date of 8-hour designations.

When we defined "applicable requirements" in § 51.900(f), we neglected to include the term attainment demonstrations.

2. *Summary of Proposed Rule.* Today, we are proposing that the term "attainment demonstration" be added to § 51.900(f) which states that:

Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the

time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment or unclassifiable * * *

The term "attainment demonstration" will be included in § 51.900(f) as "(13) Attainment demonstration or an alternative as provided under § 51.905(a)(ii)." In the final rule, we stated that an attainment demonstration was an applicable requirement for purposes of § 51.905 but did not include it under the definitions of § 51.900(f). Our intent in this proposal is to clarify that an attainment demonstration is an "applicable requirement."

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is not a "significant regulatory action." The reconsideration put forth today does not propose to substantially change the final Phase 1 Rule. With respect to one issue, we propose to retain the position we adopted in the final rule. As to the second issue, we propose to modify a date in the rule so that it is consistent with our original proposal. Finally, we are promulgating regulatory text to make two clarifications to the final rule. We believe that these do not substantially modify the intent of the final rule but rather clarify two issues.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR part 121); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The Phase 1 Rule interpreted the obligations required of 1-hour ozone nonattainment areas for purposes of anti-backsliding once the 1-hour NAAQS is revoked. This proposed reconsideration addresses two aspects of that final rule that the Agency was requested to reconsider and clarifies two other aspects of the rule. Since the Phase 1 Rule does not impose requirements on small entities our further action on aspects of that rule also does not impose requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In promulgating the Phase 1 Rule, we concluded that it was not subject to the requirements of sections 202 and 205 of the UMRA. For those same reasons, our reconsideration and clarification of several aspects of that rule is not subject to the UMRA.

The EPA has determined that this proposed rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed reconsideration addresses two aspects of the Phase 1 Rule that the Agency was requested to reconsider and clarifies two other aspects of the rule. For the same reasons stated in the Phase 1 Rule, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This proposed rule does not have "Tribal implications" as specified in Executive Order 13175.

The purpose of this proposed rule is taking comment on two issues from the Phase 1 Rule that EPA has agreed to grant for reconsideration, in addition to two other issues from the Phase 1 Rule. These issues concern the implementation of the 8-hour ozone standard in areas designated nonattainment for that standard. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribes whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

For the same reasons stated in the Phase 1 Rule, this proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this proposed rule does nothing to modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

While the proposed rule would have Tribal implications upon a Tribe that is implementing such a plan, it would not impose substantial direct costs upon it nor would it preempt Tribal law.

Although Executive Order 13175 does not apply to this proposed rule, EPA consulted with Tribal officials in developing this proposed rule. The EPA has supported a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone standard.

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

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

This proposed rule addresses two aspects of the Phase 1 Rule that the Agency was requested to reconsider and clarifies two other aspects of the rule. Neither the Phase 1 Rule nor this proposal imposes requirements on small entities. The proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., April 24, 2003.

I. National Technology Transfer Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage the States and Tribes to consider the use of such standards, where appropriate, in the development of the implementation plans.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA concluded that the Phase 1 Rule should not raise any environmental justice issues; for the same reasons, this proposal should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety. The proposed rule provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: January 27, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart X—Provisions for Implementation of 8-Hour Ozone National Ambient Air Quality Standard

2. Section 51.900 is amended by revising paragraph (f) introductory text and adding paragraph (f)(13) to read as follows:

§ 51.900 Definitions.

* * * * *

(f) *Applicable requirements* means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time of the effective date of the final rule designating the area for the 8-hour standard as nonattainment, attainment, or unclassifiable:

* * * * *

(13) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

* * * * *

3. Section 51.905 is amended by revising paragraph (e)(2)(ii) and by adding paragraph (e)(2)(iii) as follows:

§ 51.905 How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?

* * * * *

(e) * * *

(2) * * *

(ii) The State is no longer required to impose under CAA sections 181(b)(4) and 185 fees on emissions sources in areas classified as severe or extreme based on a failure to meet the 1-hour attainment date.

(iii) The State is no longer required to implement contingency measures under CAA section 172(c)(9) based on a failure to attain the 1-hour NAAQS or to make reasonable further progress toward attainment of the 1-hour NAAQS.

* * * * *

[FR Doc. 05–1997 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 605

[Docket No. FTA–99–5082]

RIN 2132–AA67

School Bus Operations; Amendment of Tripper Service Definition; Correction

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Withdrawal of rulemaking; correction.

SUMMARY: The Federal Transit Administration (FTA) published a document in the **Federal Register** of January 28, 2005, withdrawing a notice of proposed rulemaking relating to its School Bus Operations regulation. This document misidentified the Regulation Identifier Number (RIN).

FOR FURTHER INFORMATION CONTACT: Elizabeth Martineau, 202–366–1936.

Correction

In the **Federal Register** of January 28, 2005, in FR Doc. 05–1644 on page 4081, in the heading section, correct the Regulation Identifier Number (RIN) to read:

RIN 2132–AA67

Dated: January 28, 2005.

Scott A. Biehl,

Assistant Chief Counsel for Legislation and Rulemaking.

[FR Doc. 05–2022 Filed 2–2–05; 8:45 am]

BILLING CODE 4910–57–M

Notices

Federal Register
Vol. 70, No. 22
Thursday, February 3, 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

Animal and Plant Health Inspection Service

[Docket No. 04–085–2]

Monsanto Co. and Forage Genetics International; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Alfalfa Genetically Engineered for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is reopening the comment period for a petition from Monsanto Company and Forage Genetics International that seeks a determination of nonregulated status for alfalfa designated as events J101 and J163, which have been genetically engineered for tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this alfalfa presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments we receive on or before February 17, 2005.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–085–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–085–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–085–1" on the subject line.

Reading Room: You may read the petition, the environmental assessment, and any comments that we receive on Docket No. 04–085–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Virgil Meier, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–3363. To obtain copies of the petition or the environmental assessment (EA), contact Ms. Terry Hampton at (301) 734–5715; e-mail: *Terry.A.Hampton@aphis.usda.gov*. The petition and the EA are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_11001p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/04_11001p_ea.pdf*.

SUPPLEMENTARY INFORMATION: On April 16, 2004, the Animal and Plant Health Inspection Service (APHIS) received a petition from Monsanto Company of St. Louis, MO, and Forage Genetics International of West Salem, WI (Monsanto/FGI), requesting a determination of nonregulated status under 7 CFR part 340 for alfalfa (*Medicago sativa* L.) designated as events J101 and J163, which have been genetically engineered for tolerance to the herbicide glyphosate. The Monsanto/FGI petition states that the subject alfalfa should not be regulated by APHIS because it does not present a plant pest risk.

In a notice published in the **Federal Register** on November 24, 2004 (69 FR 68300–68301, Docket No. 04–085–1), APHIS announced the receipt of the Monsanto/FGI petition and solicited comments on whether the subject alfalfa would present a plant pest risk. We solicited comments concerning our notice for 60 days, ending January 24, 2005.

We are reopening the comment period for an additional 2 weeks from the date of this notice to give interested parties additional time to submit comments. We will also consider all comments we received between the January 25, 2005 (the day after the close of the original comment period) and the date of this notice.

We are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested persons for a period of 14 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment (EA) prepared to examine any environmental impacts of the proposed determination for the subject alfalfa event. The petition and the EA and any comments received are available for public review, and copies of the petition and the EA are available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the Monsanto/FGI glyphosate-tolerant alfalfa events J101 and J163 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 28th day of January 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–409 Filed 2–2–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Emerald Creek Garnet Area; Idaho Panhandle National Forests, Benewah and Latah Counties, ID

AGENCY: Forest Service, USDA.

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

SUMMARY: The St. Joe Ranger District of the Idaho Panhandle National forests is beginning analysis and preparation of an Environmental Impact Statement to address recreational gemstone digging of the garnet resource in the Emerald Creek drainage.

The project area produces extraordinary quality and quantity of large garnets. Some of the drainages produce star garnets. The Forest Service currently manages a public digging area by fee permit in 281 Gulch, a tributary to Emerald Creek.

The purpose and need for this project is based on the fact that the garnet resource is finite and valuable and there is considerable public interest in retaining the recreational digging area. Gemstone deposits within the current National Forest recreational digging area in 281 Gulch are being depleted. If the Forest Service is going to continue to provide this unique recreational digging opportunity another area needs to be identified and developed. Different operation methods are also needed to protect water quality and fish habitat while still providing a recreational gemstone collecting experience for the public.

Responsible Official: Ranotta McNair, Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, ID 83815.

DATES: The Draft Environmental Impact Statement is expected to be filed by March 25, 2005. The Final Environmental Impact Statement is expected to be filed by September 30, 2005.

Proposed Action: The Forest Service would continue operating the public digging area. Several tributaries of the East Fork of Emerald Creek would be reserved for future opportunities for public recreational digging of gemstone garnets. These areas would not be available for commercial lease. A rehabilitation plan for PeeWee, No Name and 281 Gulch would be prepared to improve fish habitat and maintain water quality. These are streams where garnet digging has occurred or is currently active and where fish habitat can be enhanced. The public dig would remain in 281 Gulch as long as it is feasible or until the operations reach Forest Road 447 on the East Fork of Emerald Creek (two to three years). Continuing auger or trench exploration would be conducted to facilitate future dig planning.

In two to three years the Forest Service would move the public dig from 281 Gulch to Garnet Gulch. Forest Service operation of the public digging area would change to protect water quality and fish habitat. This would in turn change the recreational garnet collecting experience. Currently an area along the drainage is marked off and people can choose where to dig for garnet-bearing gravels. Gravels are then washed in a settling pond. This method would be phased out in the next two to three years. Equipment would be used to remove the overburden and stockpile garnet-bearing gravels. Recreational diggers would fill a bucket from the garnet-bearing stockpile and take it to a sluice for washing.

When operations move to Garnet Gulch the public would have a longer walk to the digging area. Currently recreational garnet diggers walk approximately one quarter mile to the dig site. When operations move to Garnet Gulch the walk would be approximately one mile. The walk would have some steeper pitches (up to 20 percent) than the current walk.

The operations plan for Garnet Gulch would include using equipment for stream channel work, rehabilitation, removing overburden, and stockpiling garnet-bearing gravels. The stream would only be disturbed once. The Forest Service would be able to rehabilitate the area immediately following overburden removal rather than at the end of the digging season. Water for the sluice would be put into a settling pond, recycled and then distributed over land.

Issues: Maintaining fish and water quality are issues of primary importance. Whether or not to maintain recreational digging areas is likely to be an issue. Other issues will be identified through public involvement and environmental analysis. A likely alternative to the proposed action would include constructing a road that would allow people to drive all the way to the sluice site at Garnet Gulch.

Public Involvement: A scoping letter was sent to garnet area visitors and other people who may be interested in the project to inform them about the project and solicit comments. News releases were sent to local and major newspapers in northern Idaho. This project is also listed on the Idaho Panhandle National Forest Web site (*http://www.fs.fed.us/ipnf*). Pertinent documents will be displayed on this site. In addition, the comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is the reviewer's obligation to comment during the scoping and/or DEIS review.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1973). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Amgoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

ADDRESSES: Comments should be sent to: Emerald Creek Garnet Area EIS, St. Joe Ranger District, 222 S 7th Street Suite 1, St. Maries, ID 83861.

FOR FURTHER INFORMATION CONTACT: Tracy Gravelle, St. Joe Ranger District, Avery Office, HC Box 1, Avery, ID 83861, 208–245–6207.

Other Agency Permits: Project implementation within floodplains would require Corps of Engineers Permits (404 permits).

Dated: January 28, 2005.

Ranotta K. McNair,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 05–2046 Filed 2–2–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Warren County, PA; Notice of Intent

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service, Allegheny National Forest, Bradford Ranger District, will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed West Branch of Tionesta Project. The Forest Service is proposing actions that would move the West Branch of Tionesta Project Area from the existing condition towards the Desired Future Condition (DFC) and would maintain the DFC in situations where it has been attained. The DFC is described in the Allegheny National Forest Land and Resource Management Plan (Forest Plan).

Proposed activities to meet the Desired Future Condition fall into four main categories. (1) Timber harvest and reforestation treatments consist of: shelterwood seedcut/removal cut, shelterwood removal cut, salvage removal cut, salvage shelterwood seed cut/removal cut, single tree selection, group selection, commercial thinning, intermediate thinning, pre-commercial thinning, improvement cutting, manual site preparation and release, herbicide application, fertilization, fencing, controlled burning, scarification, and tree planting. (2) Wildlife habitat improvement treatments consist of: noncommercial thinning, oak/hickory/shrub underplanting, pruning and release of apple trees, release of white pine trees, hawthorn release, constructing new openings, opening maintenance, planting/fencing shrubs in openings, mowing, topdressing, seeding with wildflowers and grass, constructing nest/roost boxes. (3) Transportation treatments consist of: road decommissioning, road maintenance, road construction, road resurfacing, expanding and developing stone pits, and changing road access. (4) Watershed treatments consist of: Stream restoration and enhancement, obliterate and restore illegal stream crossings, enclose open top bridges, apply limestone surfacing within 300 feet of streams, and restore the natural flow of the stream.

DATES: Comments and suggestions concerning the scope of the analysis should be submitted (postmarked) by March 4, 2005 to ensure timely consideration.

ADDRESSES: Submit written, oral, or e-mail comments by: (1) Mail: "West Branch of Tionesta Project," ID Team Leader, 29 Forest Service Drive, Bradford, PA 16701; (2) phone: (814) 362–4613; (3) e-mail: *comments-eastern-allegheny-bradford@fs.fed.us* (please note: when commenting by e-mail be sure to list West Branch of Tionesta EIS in the subject line and include a U.S. Postal Service address so we may add you to our mailing list). For further information contact O'Dell E. Tucker, project team leader, Bradford Ranger District, at (814) 362–4613 or mail/e-mail correspondence to addresses listed above. The scoping letter and maps for the West Branch of Tionesta EIS are posted on the ANF Web site: *http://www.fs.fed.us/r9/forests/allegheny.*

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan (Forest Plan) sets site-specific goals for the management of forest resources. The West Branch of Tionesta Project includes portions of Management Area (MA) 3.0, which emphasizes timber harvesting as a means to make desired changes to forest vegetation and satisfy the public demand for wood products. The project area also includes portions of MA 6.1, which emphasizes providing habitat for wildlife, attractive scenery, and opportunities for semi-primitive motorized recreation; and portions of MA 8.0, which emphasizes protection of unique ecosystems for scientific purposes and dispersed recreation. Finally, the project area contains portions of MA 9.1, which emphasizes forest area to be managed with minimal investments only to protect the environment and the incidental forest users.

Preliminary Issues were identified based on past projects in the area (environmental assessments), issues developed for similar projects, and site-specific concerns raised by the resource specialists. These issues, listed below, will provide a framework that the Forest Service will use to analyze a range of alternatives, including No Action for the Project Area.

(1) *Roads*—The West Branch of Tionesta project area contains heavily roaded areas due to extensive oil and gas developments in the northwestern and eastern portions of the project area. Water quality and stream flow regimes are the primary concerns of heavy road densities. Sedimentation of streams and riparian areas is also a concern from roads due to impacts to stream channel morphology and aquatic habitat. The West Branch of Tionesta Roads Analysis Project (RAP) team will continue evaluating these and other road related issues, and will present their findings in a RAP document that will be available to the public.

(2) *Special Designation Waters*—Wildcat Run and Arnot Run are designated "Exceptional Value Watersheds" by the Pennsylvania Department of Environmental Protection. Slater Run, while not a State special designated water, flows directly into the Allegheny River where threatened, endangered, and sensitive species are located. The special status of waterways in these watersheds will increase sensitivity towards land disturbing activities such as vegetation and road management.

(3) *Biological Diversity and Wildlife Habitat*—The area is dominated by fifty-one to one hundred and ten year age-classes. There is a shortage of habitat provided by younger age classes and old growth. Existing younger age classes will develop into older age classes in the next decades as they mature. Certain wildlife species require different ages of vegetation. Other wildlife species need a variety of forest types positioned near each other or perhaps near water. Management practices should reflect a balance of activities that assure biological diversity is maintained or enhanced. Concepts of biological diversity suggest that land management should encourage a variety of habitats.

(4) *Proposed Special Emphasis Areas*—There are proposed management activities within the project area identified by Allegheny Defense Project for special management. Proposed vegetation management activities in these areas follow current forest plan direction.

Project Area and Roads Analysis Project Public Meeting: The public meeting for the project area and the RAP for WBTPA has been scheduled for Saturday, February 19, 2005 at 10 a.m. to 2 p.m. We will meet at the Bradford

Ranger District Office at the junction of State Route 321 and State Route 59 South, Marshburg, PA. (R.S.V.P by calling 814–362–4613). There will also be an opportunity for the public to ask questions and make suggestions to the ID Team.

Comment Requested: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Your comments will help the Forest Service refine and enhance the list of issues that are considered when analyzing alternatives to the proposed action. When this analysis is nearly complete, the Draft EIS will be filed with the Environmental Protection Agency and become available for public review (expected by November 2005). At that time the Environmental Protection Agency will publish a Notice of Availability of the document in the **Federal Register** (this will begin the 45-day comment period on the Draft EIS). After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The Final EIS and Record of Decision are scheduled for release in May 2006.

Comments received, including names and addresses of those who comment, will be considered part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519 553 [1978]). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 [9th Cir. 1986] and MDSU *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality *Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points.

This decision will be subject to appeal under 36 CFR 215. The responsible official is John R. Schultz, Bradford Ranger District, 29 Forest Service Drive, Bradford, PA 16701.

Dated: January 27, 2005.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 05–2005 Filed 2–2–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet February 18, 2005, (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees, (4) Discussion/approval of projects, (5) Old Business, (6) Matters before the group-discussion only, and (7) Next agenda and meeting date.

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

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

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

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by May 18, 2004. Public comment will have the opportunity to address the committee at the meeting.

Dated: January 24, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05–2030 Filed 2–2–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Restructure of Sub-Committees, (5) Project Proposals, (6) Review of Projects Funded to Date, (7) General Discussion, (8) County Supervisor's Update, and (9) Next Agenda.

DATES: The meeting will be held on February 10, 2005 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Avenue, Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

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 matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 8, 2005 will have the opportunity to address the committee at those sessions.

Dated: January 27, 2005.

James F. Giachino,

Designated Federal Official.

[FR Doc. 05–2031 Filed 2–2–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Bob Douglas to Talk about the Legislator, (5) Web site Update, (6) Noxious Weed Proposal, (7) National RAC Meeting, (8) General Discussion, (9) Next Agenda.

DATES: The meeting will be held on February 28, 2005, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–1815; e-mail *ggaddini@fs.fed.us.*

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 matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 25, 2005 will have the opportunity to address the committee at those sessions.

Dated: January 27, 2005.

James F. Giachino,

Designated Federal Official.

[FR Doc. 05–2034 Filed 2–2–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[Docket No. 050125015–5015–01]

Privacy Act Altered System of Records

AGENCY: Department of Commerce.

ACTION: Notice; Commerce/Department-18; Employees Personnel Files Not Covered by Notices of Other Agencies.

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled Commerce/Department-18; Employees Personnel Files Not Covered by Notices of Other Agencies.

DATES: The system of records becomes effective on February 3, 2005.

ADDRESSES: For a copy of the system of records please mail requests to Curtina Smith, U.S. Department of Commerce, Room 6422, 1401 Constitution Avenue, NW., Washington, D.C. 20230, 202–482–4186.

FOR FURTHER INFORMATION CONTACT: Curtina Smith, U.S. Department of Commerce, Room 6422, 1401 Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On September 27, 2004, the Commerce published and requested comments on a proposed Privacy Act System of Records notice entitled Commerce/Department-18; Employees Personnel Files Not Covered by Notices of Other Agencies. No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed system as final without changes effective February 3, 2005.

Dated: January 27, 2005.

Brenda Dolan,

U.S. Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 05–2050 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2005]

Foreign-Trade Zone 202—Los Angeles, CA, Application for Foreign-Trade Subzone Status, IKEA Wholesale Inc. (Home Furnishings and Accessories), Lebec, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles (California), grantee of FTZ 202, requesting special-purpose subzone status for the warehousing and distribution facility (home furnishings and accessories) of IKEA Wholesale Inc. (IKEA), located in Lebec, California. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 21, 2005.

The IKEA facility is located at 4104 Industrial Parkway Drive, Lebec (80 acres total; 1.7 million sq. ft. of enclosed space). The facility (approximately 300 employees) may be used under FTZ procedures for warehousing, packaging, labeling, palletization, quality control, recovery/repair, and distribution of home furnishings and accessories. IKEA's application indicates that approximately 10 to 15 percent of the merchandise handled by the facility is domestically sourced.

Zone procedures would exempt IKEA from Customs duty payments on foreign-status merchandise that is re-exported. On its domestic shipments, IKEA would be able to defer duty payments until merchandise is shipped from its facility. The company would be able to avoid duty on foreign merchandise which becomes scrap/waste, estimated at approximately one to two percent of imported products. The application indicates that IKEA anticipates realizing significant logistical/procedural benefits. All of the above-cited savings from FTZ procedures could help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is April 4, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 19, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the

Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Bakersfield U.S. Export Assistance Center, 2100 Chester Avenue, 1st Floor Suite 166, Bakersfield, California 93301.

Dated: January 24, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–2087 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–896

Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal From the People's Republic of China

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

EFFECTIVE DATE: February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–4243 or (202) 482–3434.

SUPPLEMENTARY INFORMATION:

Preliminary Determination of Critical Circumstances

Based on allegations contained in the petitioners' [1] December 28, 2004, amendment to the February 27, 2004 petition, we preliminarily find, pursuant to section 733(e) of the Tariff Act of 1930, as amended ("the Act"), and section 351.206 of the Department of Commerce ("Department") regulations, that critical circumstances exist with regard to imports of magnesium metal from the People's Republic of China ("PRC") for the following entities: Tianjin Magnesium International Co., Ltd. ("Tianjin"), mandatory respondent, Guangling Jinghua Science and Technology Co , Ltd. ("Guangling"), the sole Section A respondent, and the PRC-wide entity. Critical circumstances do not exist with regard to imports magnesium metal from the PRC for the RSM companies ("RSM") [2].

[1] The petitioners in this antidumping duty investigation are the U.S. Magnesium LLC, United Steelworkers of America, Local 8319 and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374 ("petitioners").

[2] The company reported that "RSM" is the trade name of a group of companies, some of which produced and exported the subject merchandise during the period of investigation ("POI"). RSM reported that the following companies are in the RSM group: Nanjing Yunhai Special Metals Co., Ltd. ("Yunhai Special"), Nanjing Welbow Metals Co., Ltd. ("Welbow"), Nanjing Yunhai Magnesium Co., Ltd. ("Yunhai Magnesium"), Shanxi Wenxi Yunhai Metals Co., Ltd. ("Wenxi Yunhai"), Shanxi Wenxi Bada Magnesium Co., Ltd. ("Bada Magnesium"), Yuncheng Wenxi Welfare Magnesium Plant ("Welfare Magnesium), and Nanjing Yunhai Metals Plant ("Yunhai Metals").

Background

Petitioners filed a timely allegation of critical circumstances on December 28, 2004, in accord and with section 733(e)(1) of the Act and section 351.206(c)(1) of the Department's regulations. None of the parties to the proceeding submitted comments in response to this allegation in accord with section 351.301(c) of the Department's regulations. On January 11, 2005, the Department requested the RSM Companies, Tianjin, and Guangling to report their shipments of subject merchandise to the United States on a monthly basis during the period January 2003 through December 2004. On January 19, 2005, the RSM Companies and Tianjin provided the requested information. Guangling did not respond to the Department's request for information.[3]

Period of Investigation

The POI is July 1, 2003, through December 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (February 27, 2003). *See* Section 351.204(b)(1) of the Department's regulations.

Scope of Investigation

The products covered by this investigation are primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes; products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an "ASTM Specification for Magnesium Alloy" [4] and thus are outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as "alloy" magnesium).

The scope of this investigation excludes the following merchandise: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy" [5]; (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form, by weight, and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

[3] *See* the memorandum to the file from Laurel LaCivita, *Antidumping Investigation of Magnesium Metal from the People's Republic of China: Shipment Doto With Respect to the Criticol Circumstances Allegotion with Respect to Beijing Guongling Jinghuo Science and Technology Co , Ltd.*, dated January 19, 2005.

[4] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annuol Book of ASTM Stondords: Volume 01.02 Aluminum and Mognesium Alloys.*

[5] This material is already covered by existing antidumping orders. *See Antidumping Duty Orders: Pure Magnesium from the People's Republic of Chino, the Russion Federotion ond Ukroine; Amended Final Determinotion of Soles ot Less Thon Foir Volue: Antidumping Duty Investigotion of Pure Magnesium from the Russion Federotion*, 60 FR 25691 (May 12, 1995); *Antidumping Duty Order: Pure Mognesium in Gronular Form from the People's Republic of Chino*, 66 FR 57936 (Nov. 19, 2001).

[6] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from the PRC, Israel, and Russia. *See Final Determinotion of Soles ot Less Than Fair Volue: Pure Mognesium in Gronular Form From the People's Republic of Chino*, 66 FR 49345 (September 27, 2001); *Finol Determination of Sales ot Less Thon Foir Volue: Pure Mognesium From Isroel, 66 FR 49349 (September 27, 2001); Finol Determinotion of Soles ot Not Less Thon Fair Value: Pure Mognesium From the Russion Federotion*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

The merchandise subject to this investigation is classifiable under items 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Critical Circumstances

On December 28, 2004, petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of magnesium metal from the PRC. Because petitioners submitted critical circumstances allegations more than 30 days before the scheduled date of the final determination but later than 20 days before the preliminary determination, the Department must issue a preliminary determination of critical circumstances within 30 days after petitioners submitted the allegation. *See* Section 351.206(c)(2)(ii) of the Department's regulations. Section 733(e)(1) of the Act provides that, upon receipt of a timely allegation of critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine (i) the volume and value of the imports, (ii) seasonal trends, and (iii) the share of domestic consumption accounted for by the imports. In addition, Section 351.206(h)(2) of the Department's regulations provides that, "In general, unless the imports during the 'relatively short period' * * * have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) The evidence presented in the petitioners' December 28, 2004, submission; (2) evidence obtained since the initiation of the less-than-fair-value ("LTFV") investigation (*i.e.*, import statistics released by the U.S. Census Bureau); and (3) the International Trade Commission's ("ITC") preliminary material injury determination. *See Investigation Nos. 731–TA–1071–1072 (Preliminary), Magnesium from China and Russia*, 69 FR 29329 (May 21, 2004) ("*ITC Preliminary Determination*").

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of magnesium metal from the PRC. Petitioners made no statement concerning a history of dumping magnesium metal from the PRC. We are not aware of any other antidumping order in the United States or in any country on magnesium metal from the PRC. Therefore, the Department finds no history of injurious dumping of magnesium metal from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary antidumping duty determination.

The Department normally considers margins of 25 percent or more for export price ("EP") sales and 15 percent or more for constructed export price ("CEP") sales sufficient to impute importer knowledge of sales at LTFV. *See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002). Our preliminary determination found margins of 117.41 percent for the RSM companies, 117.41 percent for China National Nonferrous Metals I/E Corp., Jiangsu Branch ("Jiangsu"), and 177.62 percent for Tianjin, the mandatory respondents in this investigation. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal from the People's Republic of China*, 69 FR 59187 ("*Preliminary Determination*") (September 24, 2004). The sole Section A respondent, Guangling, preliminarily received a separate rate margin of 140.09 percent based on the weighted-average margins of the RSM companies and Tianjin. *See Preliminary Determination*. The PRC-wide entity received a margin of 177.62 percent. *See Preliminary Determination*. In addition, *see* the memorandum from Laurie Parkhill, Office Director, China/NME Group, to Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, *Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China (the "PRC")—Affirmative Preliminary Determination of Critical Circumstances*, dated January 28, 2005 ("*Preliminary Critical Circumstances Memorandum*") at Attachment II.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997). In the present case, the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of magnesium metal from the PRC. *See ITC Preliminary Determination*.

Based on the ITC's preliminary determination of material injury and the preliminary dumping margins for the RSM companies, Jiangsu, Tianjin, the Section A respondent, and the PRC-wide entity, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importers knew or should have known that there was likely to be material injury by means of sales at LTFV of subject merchandise from the PRC from these respondents.

Pursuant to Section 351.206(h) of the regulations, we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent during a relatively "short period" over imports in the base period. The Department normally considers a "relatively short period" as the period beginning on the date the proceeding begins and ending at least three months later. *See* section 351.206(i) of the Department's regulations. According to the regulations, "if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time." The Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. *See* Section 351.206(c)(2) of the regulations.

Petitioners based their allegation of critical circumstances in this investigation on the increase in imports of magnesium metal that began with the filing of the antidumping duty petition on February 27, 2004, and continued through the preliminary determination on September 24, 2004. According to Section 351.206(i) of the Department's regulations, the comparison period normally should be at least three months; the Department's practice is to rely upon the longest period for which information is available from the month that the petition was filed through the date of the preliminary determination. *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800 (November 28, 2003). Therefore, we have chosen a period of six-months, as the comparison period in determining preliminarily whether imports of the subject merchandise have been massive. A six-month period reflects the "relatively short period" commanded by the statute for determining whether imports have been massive. *See* Section 733(e)(1)(B) of the Act. Therefore, in applying the six-month period, we used a base period of March 2004 through August 2004 and a comparison period of August 2003 through January 2004. The Department requested that the respondents in this investigation provide monthly shipment data for 2003 and 2004. *See* Letter to parties dated January 11, 2005. In addition, the Department obtained U.S. import data for subject merchandise for 2003 and 2004 as reported at the ITC's Web site, *http://dataweb.usitc.gov*.

On January 19, 2004, the Department received company-specific data from Tianjin, the RSM companies, and Jinagsu. When we compared these companies' import data during the base period with the comparison period, we found that the volume of imports of magnesium metal from Tianjin increased by more than 15 percent and the volume of imports from the RSM companies and Jiangsu decreased over the base period. *See Preliminary Critical Circumstances Memorandum* at Attachment I. Therefore, we find the imports for Tianjin, whose volume of exports increased over the base period by more 15 percent, to be massive.

Because the PRC NME entity did not respond to the Department's antidumping questionnaire, we were unable to obtain shipment data from the PRC NME entity for purposes of our critical circumstances analysis and there is therefore no verifiable information on the record with respect to its export volumes. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, Section 776(b) of the Act provides that, if a party has failed to act to the best of its ability, the Department may apply an adverse inference.

The PRC NME entity did not respond to the Department's request for information, at all. Thus, we are using adverse facts available, in accordance with section 776(a) of the Act, in preliminarily determining whether there were massive imports of merchandise produced by the PRC NME entity. Accordingly, an adverse inference is warranted.

The only reliable source of publicly available data from which to measure whether imports from the PRC entity were massive is the aggregate import statistics from the PRC, as reported on the ITC DataWeb site (*http://dataweb.usitc.gov*). Therefore, we have used these statistics to determine whether imports from the PRC entity were massive during the comparison period. Section 776(c) of the Act provides that, when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. The aggregate import statistics from the ITC DataWeb are publicly available data by which the Department can determine import volumes of magnesium metal into the United States on a month-by-month basis. Furthermore, this data is reported on a U.S. government Web site, enhancing its reliability.

Our analysis of the import statistics indicate that shipments in the comparison period increased by at least 15 percent over those for the base period. In comparing import statistics from the base period to the comparison period, imports of magnesium metal have increased by 21.63 percent (from 6,874,595 kgs. to 8,361,875 kgs.). *See Preliminary Critical Circumstances Memorandum* at Attachment III. This comparison is based on one of the two HTSUS numbers identified in the scope of the investigation, HTS 8104.19.00. *See Initiation of Antidumping Duty Investigation: Magnesium Metal from the People's Republic of China*, 69 FR 15293 (March 25, 2004). We did not evaluate imports under HTS 8104.30.00, the only other HTS number containing merchandise subject to this investigation, because it includes imports of subject and non-subject merchandise and, thus, cannot indicate reliably whether imports of subject merchandise have increased during the comparison period. As a result of our analysis, we determine that there were massive imports from the PRC-wide entity during the applicable relatively short period of time.

The sole Section A Respondent in this investigation, Guangling, did not respond to our request for information concerning monthly shipment data for

the purposes of determining critical circumstances. Therefore, for the reasons expressed above with respect to the PRC-wide entity, we determine that the increase in imports from Guangling were massive during the applicable relatively short period of time.

We preliminarily determine for the RSM companies and Jiangsu that no critical circumstances exist because we do not find massive imports over a relatively short period.

We will issue a final determination concerning critical circumstances for all producers/exporters of subject merchandise from the PRC when we issue our final determination in this investigation, which will be on February 16, 2005.

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than three days after the publication of the preliminary determination of critical circumstances in this proceeding. Rebuttal briefs limited to issues raised in the aforementioned case briefs will be due no later than two days after the deadline date for case briefs.

Suspension of Liquidation

With respect to Tianjin, Guangling and the PRC-wide entity for magnesium metal we will direct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all unliquidated entries of magnesium metal from the PRC that were entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination in these investigation. In accordance with section 733(d) of the Act, with respect to the RSM companies and Jiangsu, we will make no changes to our instructions to the CBP with respect to the suspension of liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of our preliminary determination in the **Federal Register**.

This determination is issued and published in accordance with Sections 733(f) and 777(i)(1) of the Act.

Dated: January 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–2187 Filed 2–2–05; 8:45 am]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From Korea: Notice of Extension of Time Limit for 2003–2004 Administrative Review

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

EFFECTIVE DATE: February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1174 or (202) 482–3813, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On June 30, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on certain polyester staple fiber ("PSF") from Korea, covering the period May 1, 2003, through April 30, 2004 (69 FR 39409). The preliminary results for the antidumping duty administrative review of certain PSF from Korea are currently due no later than January 31, 2005.

Extension of Time Limits for Preliminary Results

Because the Department requires additional time to review and analyze the supplemental questionnaire response, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, January 31, 2005). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than May 31, 2005, in accordance with section 751(a)(3)(A) of the Act.

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

Dated: January 28, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–2085 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From the Netherlands

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

ACTION: Notice of amended preliminary determination of sales at less than fair value.

EFFECTIVE DATE: February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or John Drury, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3019 or (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 2004, the Department determined that purified carboxymethylcellulose ("CMC") from the Netherlands is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). *See* Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From the Netherlands, 69 FR 77205 (December 27, 2004). The Department released disclosure materials to interested parties on December 21, 2004.

On December 27, 2004, respondent Noviant BV ("Noviant") submitted a letter to the Department alleging significant ministerial errors as defined by 19 CFR 351.224(g). On December 30, 2004, Aqualon Company ("petitioner") also submitted a letter to the Department alleging an additional ministerial error.

Scope of the Investigation

For purposes of this investigation, the products covered are all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Amended Preliminary Determination

In accordance with section 735(e) of the Act, we have determined that significant ministerial errors were made in the calculation of Noviant's preliminary margin. Specifically, we have determined that there were errors concerning the calculation of constructed export price ("CEP") profit, third-party commissions, indirect selling expenses, currency conversions, billing adjustments, and level of trade. We have disregarded comments by petitioner as they were not timely filed in accordance with 19 CFR 351.224(c)(2). For a detailed discussion of the above-cited ministerial error allegations and the Department's analysis, *see* Memorandum to Richard O. Weible, "Allegation of Significant Ministerial Errors; Preliminary Determination in the Antidumping Duty Investigation of Purified Carboxymethylcellulose from the Netherlands" dated January 27, 2005, a public version of which is on file in room B–099 of the main Commerce building.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the preliminary determination of the antidumping duty investigation of Purified CMC to correct these significant ministerial errors. The revised preliminary weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Revised weighted-average margin percentage
Noviant BV	27.11	13.27
All others	22.21	12.84

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of Purified CMC from the Netherlands. CBP shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price or CEP, as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–2089 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Stainless Steel Plate in Coils From Taiwan; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review

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

EFFECTIVE DATE: February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack at (202) 482–3874 or (202) 482–4593, respectively, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2004, the Department published in the **Federal Register** (69 FR 39409) a notice of initiation of an administrative review of the antidumping duty order on stainless steel plate in coils from Taiwan. The period of review (POR) is May 1, 2003, through April 30, 2004, and the preliminary results are currently due no later than January 31, 2004.

Extension of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because the Department received a filing from the petitioners in this administrative review [1] on January 21, 2005, in which the petitioners allege that Ta Chen Stainless Pipe Co., Ltd. misclassified entries of subject merchandise made during the POR as non-subject merchandise. The Department requires further time in order to analyze the issue. Consequently, we have extended the deadline for completing the preliminary results until May 31, 2005.

This extension is in accordance with section 751(a)(3)(A) of the Act (19

[1] The petitioners are Allegheny Ludlum Corp., United Auto Workers Local 3303, Zanesville Armco Independent Organization and the United Steelworkers of America, and AFL–CIO/CLC.

U.S.C. 1675(a)(3)(A)) and 19 CFR 351.213(h)(2).

Dated: January 28, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–2088 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established to ensure regular communication between Government and the manufacturing sector. This will be the third meeting of The Manufacturing Council and will include updates by the Council's three subcommittees. For information about the Council, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm.*

DATES: February 18, 2005. *Time:* 1:30 p.m.

ADDRESSES: Henry Ford Museum, Lovett Hall, 20900 Oakwood Blvd., Dearborn, MI 48124. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than February 10, 2005, to The Manufacturing Council, Room 4043, Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (Phone: 202–482–1369). The Executive Secretariat encourages interested parties to refer to The Manufacturing Council Web site (*http://www.manufacturing.gov/council/*) for the most up-to-date information about the meeting and the Council.

Dated: January 28, 2005.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. 05–2006 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On January 21, 2005, Tembec, Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Determination under Section 129(a)(4) of the Uruguay Round Agreements Act, made by the United States International Trade Commission, respecting Certain Softwood Lumber Products from Canada. This determination was published in the **Federal Register**, (69 FR 75916) on December 20, 2004. The NAFTA Secretariat has assigned Case Number USA–CDA–2005–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 21, 2005, requesting panel review of the determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 22, 2005);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 7, 2005); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 27, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 05–2014 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012505B]

Endangered Species; Permit No. 1226 and Permit No. 1239

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

ACTION: Scientific research permit modifications.

SUMMARY: Notice is hereby given that requests for modifications to scientific research permits No. 1226 submitted by the New York State Department of Environmental Conservation, Hudson River Fisheries Unit, Bureau of Marine Resources, 21 South Putt Corners Road, New Paltz, New York, 12561–1696 (Kathryn A. Hattala, Principal Investigator) and No. 1239 submitted by Dr. Boyd Kynard, U.S. Geological Survey, Conte Anadromous Fish Research Center, P.O. Box 796, One Migratory Way, Turners Falls, Massachusetts 01376, have been granted.

ADDRESSES: The modifications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, phone (301) 713–2289, fax (301) 427–2521; and,

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, phone (978) 281–9328, fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR parts 222–226).

The New York State Department of Environmental Conservation is authorized to sample for and collect 300 shortnose sturgeon (*Acipenser brevirostrum*) annually in the Hudson River. The objectives of the study are to collect data on current distribution, abundance, length structure and movements of shortnose sturgeon in this river system. This modification will extend the permit through October 31, 2006.

Dr. Kynard is authorized to sample for and collect 300 shortnose sturgeon in the Connecticut River. The objectives of the study are to collect data on current distribution, abundance, length structure and movements of shortnose sturgeon in this river system. This modification will extend the permit through June 1, 2006.

Issuance of these modifications, as required by the ESA was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of these permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 22, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2002 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050114009–5009–01; I.D. 011105B]

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notice.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2005, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

DATES: Effective February 3, 2005.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, (301) 713–2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2004 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2005 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2005 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: January 27, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–2001 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

January 28, 2005.

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

ACTION: Designation.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain woven, 100 percent cotton, double-napped, flannel fabric, of the specification detailed below, classified in subheading 5209.31.6050 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in products covered by textile categories 340, 341, 347, 348, 350, 351, and woven underwear in category 352, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The CITA hereby designates such apparel articles, that are both cut and sewn or otherwise assembled in an eligible CBTPA beneficiary country, from this fabric as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States.

EFFECTIVE DATE: February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On September 23, 2004, the Chairman of CITA received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, double-napped flannel fabric, of detailed specifications, classified in HTSUS subheading 5209.31.6050, for use in shirts, trousers, nightwear, robes, dressing gowns, and woven underwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for such apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics. On September 28, 2004, CITA requested public comment on the petition. See Request for Public Comment on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA) (69 FR 57905). On October 19, 2004, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On October 17, 2004, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On November 4, 2004, the U.S. International Trade Commission provided advice on the petitions.

Based on the information and advice received and its understanding of the industry, CITA determined that the fabric set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On November 19, 2004, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired.

CITA hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, products covered by textile categories 340, 341, 347, 348, 350, 351, and woven underwear in category 352, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from certain woven, 100 percent cotton, double-napped, flannel fabric, of the specifications detailed below, classified in the indicated HSTUS subheadings, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112(d) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

Specifications:

Petitioner Style No:	2897A
HTS Subheading:	5209.31.6050
Fiber Content:	100% Cotton
Weight:	203 g/m2
Width:	150 centimeters cuttable
Thread Count:	21 warp ends per centimeter; 18 filling picks per centimeter; total: 39 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 13.54 metric, open end spun; overall average yarn number: 19.2 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–2086 Filed 2–2–05; 8:45 am]

BILLING CODE 3510–DS

CONSUMER PRODUCT SAFETY COMMISSION

Public Meeting Concerning Proposed Standard for the Flammability (Open Flame) of Mattresses and Mattress/Foundation Sets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") will conduct a public meeting on March 3, 2005 to receive oral comments concerning the Commission's notice of proposed rulemaking ("NPR") proposing a standard to address open flame ignition of mattresses. 70 FR 2470. The Commission invites members of the public to make oral presentations concerning information or comments related to the proposed standard. The Commission will consider these presentations as it proceeds with the rulemaking and the possible issuance of a final rule.

DATES: The meeting will begin at 10 a.m. on March 3, 2005. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by the CPSC Office of the Secretary no later than February 24, 2005. Persons making presentations at the meeting should provide an additional 25 copies for dissemination on the date of the meeting.

The Commission reserves the right to limit the number of persons who make presentations and the duration of their presentations. To prevent duplicative presentations, groups will be directed to designate a spokesperson.

As stated in the NPR, the period for submission of written comments on the mattress NPR is open until March 29, 2005. Written comments may be sent by e-mail, fax or mail to the addresses listed below.

ADDRESSES: The meeting will be in room 420 of the Bethesda Towers Building, 4330 East-West Highway, Bethesda, MD. Requests to make oral presentations, and texts of oral presentations should be captioned "Mattress NPR Hearing" and submitted by e-mail to *cpsc-os@cpsc.gov*. or by facsimile to (301) 504–0127. Requests and texts of oral presentations may also be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting contact Margaret Neily, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7530; e-mail: *mneily@cpsc.gov*. For information about the schedule for submission of requests to make oral presentations and submission of texts of oral presentations, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; fax (301) 504–0127; e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On January 13, 2005, the Commission issued a notice of proposed rulemaking ("NPR") proposing a flammability standard under the authority of the Flammable Fabrics Act that would address open flame ignition of mattresses and mattress and foundation sets ("mattresses/sets"). 70 FR 2470. The NPR and the staff's briefing package are available on the Commission's Web site at *www.cpsc.gov*. Mattresses/sets that comply with the proposed performance requirements will have a reduced heat release rate, generating a smaller size fire for a period of time than mattresses/sets made of traditional materials. This will reduce the likelihood that flashover will occur (the point at which the room's contents are simultaneously ignited by radiant heat), and allow more time for occupants to escape from the fire. Thus, the proposed standard should result in significant reductions in deaths and injuries associated with mattress fires.

The proposed standard sets forth performance requirements that each mattress/set must meet before being introduced into commerce. The test method is a full scale test based on research conducted by the National Institute of Standards and Technology ("NIST"). The mattress specimen (a mattress or mattress and foundation set, usually in a twin size) is exposed to a pair of T shaped propane burners and allowed to burn freely for a period of 30 minutes. The burners were designed to represent burning bedclothes. Measurements are taken of the heat release rate from the specimen and energy generated from the fire. The proposed standard establishes two test criteria, both of which the mattress/set must meet in order to comply with the standard: (1) The peak rate of heat release for the mattress/foundation set must not exceed 200 kW at any time during the 30 minute test; and (2) the total heat release must not exceed 15 MJ for the first 10 minutes of the test.

There are provisions in the proposed rule to minimize the testing burden. For example, manufacturers may sell a mattress/set based on a prototype (mattress design) that has not been tested if that prototype differs from a qualified prototype only with respect to (1) mattress/foundation size; (2) ticking, unless the ticking of the qualified prototype has characteristics designed to improve performance on the burn test; and/or (3) any component, material, or method of construction that the manufacturer can demonstrate, on an objectively reasonable basis, will not cause the prototype to exceed the test criteria specified above.

The proposed standard also minimizes the testing burden by allowing for "pooling." Under this approach, one manufacturer would conduct the full prototype testing required (testing three prototype specimens), obtaining passing results, and the other manufacturer(s) may then produce mattresses/sets represented by that prototype so long as they conduct one confirming test on a specimen of the prototype that they produce.

The details of the proposed standard are discussed in the NPR published in the **Federal Register** on January 13, 2005. 70 FR 2470. As stated in the NPR, the Commission invites submission of written comments on the proposed standard by March 29, 2005.

B. The Public Meeting

The Flammable Fabrics Act requires that the Commission provide an opportunity for the oral presentation of "data, views, or arguments" in addition to written comments. 15 U.S.C. 1193(d). Thus, the Commission is providing this forum for oral presentations concerning the mattress proposed standard.

Participation in the meeting is open. See the **DATES** section of this notice for information on making requests to give oral presentations at the meeting.

The Commission requests comments on the following specific areas of interest that were noted in the mattress NPR:

1. Comments from small businesses concerning the anticipated economic impact of the requirements of the proposed mattress standard.

2. Comments, especially from small businesses, concerning the proposed one year effective date and the impact such date could have.

3. Comments concerning the Commission staff's assessment of the possible toxicity and environmental impact of the proposed standard.

Dated: January 31, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 05–2073 Filed 2–2–05; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0101]

Federal Acquisition Regulation; Information Collection; Drug-Free Workplace

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning drug-free workplace. The clearance currently expires May 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 4, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.9000–0101, drug-free workplace, in all correspondence.

FOR FURTHER INFORMATION CONTACT Craig Goral, Contract Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at FAR 52.223–6, Drug-Free Workplace, requires (1) contract employees to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, to notify the contracting officer.

The information provided to the Government is used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

B. Annual Reporting Burden

Respondents: 600.
Responses Per Respondent: 1.
Annual Responses: 600.
Hours Per Response: .17.
Total Burden Hours: 102.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

Dated: January 28, 2005

Julia B. Wise,

Acting Director, Contract Policy Division.

[FR Doc. 05–2017 Filed 2–2–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) for Housing Privatization Phase II at Hickam Air Force Base and Bellows Air Force Station, O'ahu, HI (Including Privatization of Housing in Historic Districts Eligible for Inclusion on the National Historic Register of Historic Places)

AGENCY: United States Air Force.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations (CFR) Parts 1500–1508), and Air Force's Environmental Impact Analysis Process (EIAP) as implemented by 32 CFR Part 989, the United States Air Force (Air Force) is issuing this notice to advise the public of our preparation of an Environmental Impact Statement (EIS) for the Housing Privatization Phase II at Hickam Air Force Base (AFB) and Bellows Air Force Station (AFS), O'ahu, Hawaii (Including Privatization of Housing in Historic Districts Eligible for Inclusion on the National Register of Historic Places). The project will require Section 106 consultation pursuant to the National Historic Preservation Act to run concurrently with the NEPA documentation. The Air Force proposes to transfer 1,332 housing units (1,326 units on Hickam AFB and six units on Bellows AFS) and associated facilities (*e.g.*, sidewalks and roads) to a successful offeror (SO) and implementation of a long-term lease to the SO for land associated with the housing units.

The current proposal evaluates four alternatives—(1) No Action; (2) Proposed Action: Privatization of remaining housing units on Hickam AFB and Bellows AFS to include the removal of historic homes from the housing inventory (demolition, relocate from the site, redesignation as non-residential units or a combination of these three sub alternatives); (3) privatization of remaining housing units on Hickam AFB and Bellows AFS with terms and conditions to insure preservation of historic property; and (4) privatization of remaining housing units on Hickam AFB and Bellows AFS with the exception of housing units in the historic districts that would remain under Government control.

Information: The Air Force, through the 15 Airlift Wing (AW), will conduct a Public Scoping Meeting on February 17, 2005, 6 p.m. at the Best Western Plaza Hotel, 3253 N. Nimitz Highway, Honolulu, Hawaii. The meeting's purpose is to determine the environmental issues and concerns to be analyzed, to solicit comments on the Proposed Action and alternatives, and to solicit input for other alternatives to be considered in the EIS. All comments received during the scoping meeting will be considered prior to the Air Force making a final decision.

Point of Contact: For further information concerning the proposed action or alternatives to the proposed action, please contact Mr. Richard Parkinson, Chief, Environmental Flight, 15 CES/CEV, 75 H Street, Hickam AFB,

HI 96853–5233, phone: (808) 449–1584, x232.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–2012 Filed 2–2–05; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Meeting Notice for Air Force Academy Board of Visitors

Pursuant to Section 9355, Title 10, United States Code, the U.S. Air Force Academy Board of Visitors will meet at the Rayburn Building in Washington, DC, February 11, 2005. The purpose of the meeting is to consider the morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in Paragraphs (2), (6), and Subparagraph (9)(B) of Subsection (c) of Section 552b, Title 5, United States Code. The determination to close certain sessions is based on the consideration that portions of the briefings and discussion will relate solely to the internal personnel rules and practices of the Board of Visitors or the Academy; involve information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or involve discussions of information the premature disclosure of which would be likely to frustrate implementation of future agency action. Meeting sessions will be held in room 2212 of the Rayburn Building, Washington, DC.

For further information, contact Lieutenant Colonel Paul Price, Chief, USAFA & Accessions Activities Division, Directorate of Learning and Force Development, Deputy Chief of Staff, Personnel, AF/DPLA, 1040 Air Force Pentagon, Washington, DC, 20330–1040, (703) 695–9855.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–2045 Filed 2–2–05; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to present and discuss the findings of the 2004 Science and Technology Quality Review of Air Force Research Laboratory programs. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: February 24, 2005.

ADDRESSES: 1670 Air Force Pentagon, Room 4E936, Washington, DC 20330–1670.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4808.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–2049 Filed 2–2–05; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, March 2, 2005.

Place of Meeting: Veterans Affairs Conference room, Room 418, Senate Russell Building, Washington, DC.

Start Time of Meeting: Approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Shaun T. Wurzbach, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organization Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs at the USMA. All proceedings are open.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–2054 Filed 2–2–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Mandatory Use of US Bank's Power Track System by Department of Defense Personal Property Transportation Service Providers (TSPs)

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC), as the Traffic Manager for Department of Defense (DOD) Personal Property Program, is informing the TSP community of SDDC's mandatory requirement to use US Bank's PowerTrack System as the transaction and payment system for all DOD TSP's handling personal property. Furthermore, the use of SDDC's Centralized Web Application (CWA) will also be mandatory. This mandatory usage is effective 30 days from publication of this notice beginning with all TSP's who have a Letter of Intent (LOI) on file with participating sites. Each time a new site is added to Phase I, TSPs not participating in Phase I will have 30 days to execute a Trading Partner Agreement with USBank and be PowerTrack certified. Implementation of PowerTrack at all Military Services and Coast Guard installations is the goal of Families First, which is the first step in moving toward the reengineered Personal Property Program of the future.

This announcement is a follow-on to **Federal Register** notices published on June 5, 2003 (68 FR 33683) and September 29, 2003 (68 FR 55947) proposing mandatory use of US Bank's Power Track System by Department of Defense Personal Property Transportation Service Providers. Effective 30 days from publication of this notice, they are required to have a Trading Partner Agreement with US Bank and be PowerTrack certified in order to participate in the DoD Personal Property Program. This notice affords TSP's ample time to plan for the use of PowerTrack. The Electronic Billing and Payment portion of the Families First Web site is located at *http://www.sddc.army.mil*, under Personal Property Program. This site offers industry access to updates on the Business Rules, Concept of Operations (CONOPS), System Interface Specifications and the latest information.

DATES: The initial rollout of PowerTrack and CWA to all sites began on March 29, 2004 and is scheduled to continue until June 30, 2005. The Evaluation Phase of

Phase I ran from March 29, 2004 to September 22, 2004.

ADDRESSES: Request for additional information may be sent by e-mail to: *thomasg@sddc.army.mil*; or by courier to: Military Surface Deployment Distribution Command, ATTN: SDPP–PD, Room 10N35–39 (George Thomas), Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–5000.

FOR FURTHER INFORMATION CONTACT: Mr. George Thomas at (703) 428–2237.

SUPPLEMENTARY INFORMATION: The initial rollout (*see* **DATES**) served as the Evaluation Period for the Phase I process, and involved a limited number of Personal Property Shipping Office's (PPSO) and TSP's. The implementation Phase started in March 2004 and expansion to the remaining PPSO's and TSP's is scheduled for completion on or about June 30, 2005.

New sites are added to Phase I on an ongoing basis. All TSPs who have LOIs on file at these added sites are required to become PowerTrack certified and participate as Phase I TSPs effective 30 days from the date the site is added to Phase I. An updated list of all Phase I participating sites is located on the SDDC Web site. It is important to note that during this period, the participating TSPs will continue to receive the 1% PowerTrack Surcharge reimbursement fee until International Winter 05 (IW05) and Domestic Winter 05 (DW05) or Defense Future Personal Property (DPS) Rates are in effect. The Rate Solicitation for both IW05 and DW05 will be available to TSPs on March 15, 2005 and the rate filing period is scheduled for May 1, 2005 to July 15, 2005 with an effective date of October 1, 2005 for both cycles. For this reason, TSPs should file their rates for the IW05 and DW05 Winter Cycle and DPS assuming that PowerTrack and CWA will be used. DPS rates will be filed August 1–31, 2005 with an effective date of October 1, 2005.

Transportation Service Providers wishing to transport personal property shipments for the DOD must have a Trading Partner agreement with US Bank and be PowerTrack certified for the electronic payment of commercial transportation services. It is important that TSPs begin the PowerTrack certification process immediately by calling US Bank at 1–800–417–1844. Additional information on PowerTrack is available at *http://www.usbank.com/powertrack*. Only those TSPs that are PowerTrack certified will be eligible to receive personal property shipments.

I. Background

On July 7, 1997, the Under Secretary of Defense (Comptroller) issued a memorandum, which required the reengineering of defense transportation documentation and financial processes as part of an effort to revolutionize DOD business practices across all Military Services and Agencies. A major component of the reengineering effort is the implementation of US Bank's PowerTrack System. PowerTrack has now been implemented for DOD freight and personal property shipments for all modes of transportation. In June 2002, the USTRANSCOM Personal Property report was released, and USTRANSCOM directed that work begin on the future Personal Property program. USTRANSCOM tasked SDDC, in conjunction with the Military Services and Industry, to map out Families First by August 31, 2002. As a part of the Families First effort, DOD declared that PowerTrack would be utilized as the commercial business-to-business payment system.

To begin moving forward with Families First, SDDC developed a Concept of Operation (CONOPS) outlining the implementation of Phase I. Key elements of Phase I CONOPS are electronic bill payment and the CWA. The CWA will be used for approval authorization and for costing shipments, based on the current Military Rate Tender.

II. Objective

The objective of Phase I is to implement the electronic bill payment portion of Families First for all Military Installations and DOD approved TSPs. The electronic bill payment processes for Phase I will:

- Use US Bank's PowerTrack system to pay Transportation Service Providers;
- Use CWA as a tool to track and approve services performed by Transportation Service Providers; and
- Provide information visibility for Stakeholders (Personal Property Shipping Offices, Military Services, U.S. Coast Guard, General Service Administration, Transportation Service Providers, etc.).

Regulation Flexibility Act

This action is not considered rule making within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

Thomas Hicks,

Chief, Personal Property Division.

[FR Doc. 05–2052 Filed 2–2–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,280,759: Method of Controlled Release and Controlled Release Microstructures, and any continuations, divisionals, or re-issues thereof.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the U.S. Patent number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: January 28, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–2048 Filed 2–2–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; SWORD Diagnostics

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to SWORD Diagnostics, a revocable, nonassignable, exclusive license, to practice in the fields of rapid detection

of pathogens for food safety; drinking water and process water; and human and veterinary diagnostic markets in the United States and certain foreign countries, the Government-owned invention described in U.S. Provisional Patent Application No. 60/601,180: Scanned Wavelength Spectroscopic Detector (SWSD) for Identifying Biological Cells and Organisms, Navy Case No. 96,640.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 18, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to U.S. Postal delays, please fax (202) 404–7920, e-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: January 28, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–2047 Filed 2–2–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 4, 2005.

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

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

Dated: January 31, 2005.

Angela C. Arrington,

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

Office of Postsecondary Education

Type of Review: New.

Title: Annual Performance Report for Title III and Title V Grantees.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 631.

Burden Hours: 12,700.

Abstract: Titles III and V of the Higher Education Act (HEA), provide discretionary and formula grant programs that make competitive awards to eligible Institutions of Higher Education and organizations (Title III, Part E) to assist these institutions expand their capacity to serve minority and low-income students. Grantees annually submit a yearly performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project. This request is to implement a new, web-based Annual Performance Report to more effectively elicit program-specific information to be used for program monitoring and Government Performance and Results Act (GPRA) reporting purposes. The Annual Performance Report will be the cornerstone of a new Performance Measurement System tailored to strengthen the Department of Education's program monitoring efforts, streamline our processes, and enhance our customer service.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2678. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–2080 Filed 2–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before March 7, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of

Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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

Dated: January 31, 2005.

Angela C. Arrington,

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

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress, Year 2006 Assessment, Reading, Writing.

Frequency: One time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20,048.

Burden Hours: 5,074.

Abstract: The components of this clearance package are for the 2006 National Assessment of Educational Progress. Specifically they are a reading precalibration and a writing pilot for the forthcoming assessment activities.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2677. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

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

[FR Doc. 05–2081 Filed 2–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Minority Science and Engineering Improvement Program (MSEIP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.120A.

Dates: Applications Available: February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

Deadline for Intergovernmental Review: May 19, 2005.

Eligible Applicants: There are four types of MSEIP projects. For institutional, design, and special projects described in 34 CFR 637.12 through 637.14, eligible applicants include public and private nonprofit minority institutions of higher education as defined in section 361(1) and (2) of the Higher Education Act of 1965, as amended (HEA), and described later in this notice. For special projects described in 34 CFR 637.14(b) and (c), eligible applicants include nonprofit science-oriented organizations, professional scientific societies, institutions of higher education, and consortia or organizations as defined in section 361(3) and (4) of the HEA and described later in this notice. For cooperative projects described in 34 CFR 637.15, eligible applicants are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups exceeds 50 percent of the college's or university's total enrollment.

Estimated Available Funds: $3,749,000.

Estimated Range of Awards: See chart in Section II. Award Information.

Estimated Number of Awards: See chart in Section II. Award Information.

Estimated Average Size of Awards: See chart in Section II. Award Information.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the MSEIP's web site for further information on this program. The address is: *http://www.ed.gov/programs/iduesmsi/index.html.*

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSEIP is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from Section 352 of the HEA.

Competitive Priorities: Section 352 of the HEA requires the Secretary to give priority to: (a) Applications from institutions that have not previously received funding from the Minority Science and Engineering Improvement Program;

(b) Applications from previous grantees with a proven record of success; and

(c) Applications that contribute to achieving balance among funded projects with respect to—(1) Geographic region; (2) Academic discipline; and (3) project type. Competitive Priority points: Applications described in competitive priority (a) above will be awarded 10 priority points. Applications described in competitive priority (b) and (c) above, will receive preference, in the following order, if we have more applications with the same score than we have available funds. First, applications that satisfy the requirements of both (b) and (c); second, applications that satisfy the requirement of (b); and third, applications that satisfy the requirements of (c).

Program Authority: 20 U.S.C. 1067–1067k.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 637.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,749,000.

Type of project	Estimated range of awards	Estimated number of awards	Estimated average size of awards
Institutional	$100,000–$300,000	20	164,950
Design	0	0	0
Special	20,000–100,000	5	50,000
Cooperative	100,000–500,000	5	200,000

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the MSEIP web site for further information on this program. The address is: *http://www.ed.gov/programs/iduesmsi/index.html.*

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) For institutional, design, and special projects described in 34 CFR 637.12 through 637.14, eligible applicants are public and private nonprofit minority institutions of higher education as defined in Section 361(1) and (2) of the HEA. Section 361(1) and (2) define such institutions as:

(1) Public and private nonprofit institutions of higher education that:

(A) Award baccalaureate degrees; and

(B) Are minority institutions.

(2) Public or private nonprofit institutions of higher education that:

(A) Award associates degrees; and

(B) Are minority institutions that:

(i) Have a curriculum that includes science or engineering subjects; and

(ii) Enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(b) For special projects described in 34 CFR 637.14(b) and (c), eligible applicants are nonprofit science-oriented organizations, professional scientific societies, institutions of higher education, and consortia of organizations. Section 361(3) and (4) of the HEA defines these types of entities as:

(3) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees, that:

(A) Provide a needed service to a group of minority institutions; or

(B) Provide in-service training for project directors, scientists, and engineers from minority institutions; or

(4) Consortia of organizations that provide needed services to one or more minority institutions, the membership of which may include:

(A) Institutions of higher education that have a curriculum in science or engineering;

(B) Institutions of higher education that have a graduate or professional program in science or engineering;

(C) Research laboratories of, or under contract with, the Department of Energy;

(D) Private organizations that have science or engineering facilities; or

(E) Quasi-governmental entities that have a significant scientific or engineering mission.

(c) For cooperative projects described in 34 CFR 637.15, eligible entities are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups exceeds 50 percent of the total enrollment.

2. *Cost Sharing or Matching:* This program has no cost sharing or matching requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:* Ms. Carolyn Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8517. Telephone: (202) 502–7777 or by e-mail: *OPE_MSEIP@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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 persons 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: We have established a mandatory page limit for the narrative portion for each type of project application. The page limits are as follows:

Design Project Application: Applications are not requested for design project grants.

Institutional and Cooperative Project Application: The narrative portions must not exceed the equivalent of 20 double-spaced pages.

Special Project Application: The narrative portion must not exceed the equivalent of 15 double-spaced pages.You must use 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, including titles and headings. You may single space the abstract, footnotes, quotations, references, captions, tables, and forms (including the ED Forms), however, you must still use font size 12.
- Use a font that is size 12.

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: February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

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

Deadline for Intergovernmental Review: May 19, 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:* a. *General.* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

b. *Executive Order 13202:* Applicants that apply for construction funds under MSEIP must comply with Executive Order 13202, signed by President Bush on February 17, 2001 and amended on April 6, 2001. This Executive Order provides that recipients of Federal Construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other constructions project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive Order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under MSEIP that include construction activity will be provided a copy of this Executive Order and will be asked to certify that that will adhere to it.

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.

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.

a. *Electronic Submission of Applications.*

Applications for grants under the Minority Science and Engineering Improvement Program-CFDA Number 84.120A 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 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 Under the Minority Science and Engineering Improvement Program, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- 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 acknowledgement 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 Application for Federal Assistance under the Minority Science and Engineering Improvement Program to the Application Control Center after following these steps:

(1) Print the Application for Federal Assistance under the Minority Science and Engineering Improvement Program from e-Application.

(2) The applicant's Authorizing Representative must sign the Application for Federal Assistance under the Minority Science and Engineering Improvement Program.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the Application for Federal Assistance under the Minority Science and Engineering Improvement Program.

(4) Fax the signed Application for Federal Assistance under the Minority Science and Engineering Improvement Program 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 acknowledgement 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: Carolyn Proctor, U.S. Department of Education, 1990 K Street, NW., room 6048, Washington, DC 20006–8517. FAX: (202) 502–7861.

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 any 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: (CFDA Number 84.120A), 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 84.120A), 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: (CFDA Number 84.120A), 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 in 34 CFR 637.32.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section of this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and 34 CFR 75.720.

4. *Performance Measures:* The Secretary plans to establish new performance measures for the MSEIP and will provide the key measures for assessing effectiveness to successful applicants.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7777 or by e-mail: *OPE_MSEIP@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 31, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E5–411 Filed 2–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Developing Hispanic-Serving Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031S.

DATES: *Applications Available:* February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

Deadline for Intergovernmental Review: May 19, 2005.

Eligible Applicants: Except as noted below, institutions of higher education that qualify as eligible Hispanic-Serving Institutions (HSI) are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the Developing Hispanic-Serving Institutions Program. The requirements for satisfying the definition of an eligible HSI are in the Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year 2005 that was published in the **Federal Register** on November 30, 2004 (69 FR 69589). The complete HSI eligibility requirements are in 34 CFR 606.2 through 606.5 and can be accessed from the following Web site: *http://www.ed.gov/news/fedregister.*

Relationship Between HSI and Title III, Part A Programs

Note 1: A grantee under the Developing HSI Program, authorized under Title V of the Higher Education Act of 1965, as amended (HEA), may not receive a grant under any HEA, Title III, Part A Program. The Title III, Part A Programs include the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs. Further, a current Developing HSI Program grantee may not give up its grant in order to receive a grant under any Title III, Part A Program.

Note 2: An HSI that does not fall within the limitation described in Note 1 may apply for a FY 2005 grant under all Title III, Part A Programs for which it is eligible, as well as under the Developing HSI Program. However, a successful applicant may receive only one grant.

Estimated Available Funds: $26,549,000.

Estimated Range of Awards: $475,000–$700,000.

Estimated Average Size of Awards: Individual Development Grant: $496,000 per year. Cooperative Arrangement Development Grant: $650,000 per year.

Estimated Number of Awards: Individual Development Awards: 43. Cooperative Arrangement Development Awards: 8.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the HSI Program Web site for further information. The address is: *http://www.ed.gov/programs/idueshsi/index.html.*

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Developing HSI Program assists HSIs to expand educational opportunities for, and improve the academic attainment of, Hispanic students. The Developing HSI Program also enables HSIs to expand and enhance their academic offerings, program quality, and institutional stability.

Priorities: This competition includes two competitive preference priorities taken from the statute for this program. These priorities are as follows:

In accordance with 34 CFR 75.105(b)(2)(iv), the following priorities are from sections 511(d) and 514(b) of the HEA.

Competitive Preference Priorities: For FY 2005, these priorities are competitive preference priorities. These priorities are:

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award up to an additional five (5) points to an application, depending on how well the application meets this priority. Section 511(d) of the HEA provides that we must give priority to applications for development grants that contain satisfactory evidence that the HSI has entered into, or will enter into, a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under Title V of the HEA) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education.

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets this priority over an application of comparable merit that does not meet the priority. Section 514(b) of the HEA provides that we must give priority to applications for cooperative arrangement grants that are geographically and economically sound or will benefit the applicant HSI.

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 606.

II. Award Information

Type of Award: Discretionary grant. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2005. Planning grants will not be awarded in FY 2005.

Estimated Available Funds: $26,549,000.

Estimated Range of Awards: $475,000–$700,000.

Estimated Average Size of Awards: Individual Development Grant: $496,000 per year. Cooperative Arrangement Development Grant: $650,000 per year.

Estimated Number of Awards: Individual Development Awards: 43.

Cooperative Arrangement Development Awards: 8.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the HSI Program Web site for further information. The address is: *http://www.ed.gov/programs/idueshsi/index.html.*

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Except as noted below, institutions of higher education that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the Developing HSI Program. The requirements for satisfying the definition of an eligible HSI are in the Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year 2005 that was published in the **Federal Register** on November 30, 2004 (69 FR 69589). The complete HSI eligibility requirements are in 34 CFR 606.2 through 606.5 and can be accessed from the following Web site: *http://www.ed.gov/news/fedregister.*

Relationship between HSI and Title III, Part A Programs

Note 1: A grantee under the Developing HSI Program, authorized under the HEA, may not receive a grant under any HEA, Title III, Part A Program. The Title III, Part A Programs include the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs. Further, a current Developing HSI Program grantee may not give up its grant in order to receive a grant under any Title III, Part A Program.

Note 2: An HSI that does not fall within the limitation described in Note 1 may apply for a FY 2005 grant under all Title III, Part A Programs for which it is eligible, as well as under the Developing HSI Program. However, a successful applicant may receive only one grant.

2. *Cost Sharing or Matching:* There are no cost sharing or matching requirements unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If it does, it must match with non-Federal funds the amount of grant funds used for this purpose. (20 U.S.C. 1101c).

IV. Application and Submission Information

1. *Address to Request Application Package:* J. Alexander Hamilton, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7583 or by e-mail: *Josephine.Hamilton@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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: We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. You must limit your entire application to the equivalent of no more than 70 pages for the Individual Development Grant application and 100 pages for the Cooperative Arrangement Development Grant application, 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, including titles and headings. You may single space the abstract, footnotes, quotations, references, captions, tables, and forms (including the ED Forms), however, you must still use font size 12.
- Use a font that is size 12.
- No appendices or attachments should be included with the application. If you include any attachments or appendices, these items will be counted for purposes of the page limit requirement. 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:* February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

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: May 19, 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:* a. *Applicability of Executive Order 13202.* Applicants that apply for construction funds under the Developing HSI Program must comply with the Executive Order 13202 signed by President Bush on February 17, 2001 and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

b. *Other Restrictions.* We specify unallowable activities in 34 CFR 606.10. We reference additional 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.

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.

a. Electronic Submission of Applications

Applications for grants under the Developing HSI Program—CFDA Number 84.031S 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 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.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- 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 acknowledgement 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 acknowledgement 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: J. Alexander Hamilton, U.S. Department of Education, 1990 K Street, NW., room 6052, Washington, DC 20006–8513. FAX: (202) 502–7861.

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 any 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: (CFDA Number 84.031S), 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 84.031S), 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 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: (CFDA Number 84.031S), 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

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 606.21 and 606.22.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows: In tie-breaking situations described in 34 CFR 606.23, the HSI Program regulations require that we award one additional point to an application from an institution of higher education (IHE) that has an endowment fund for which the 2002–2003 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at a similar type IHE. We also award one additional point to an application from an IHE that had expenditures for library materials in 2002–2003 per FTE student that were less than the comparable average per FTE student at a similar type IHE.

For the purpose of these funding considerations, an applicant must be able to demonstrate that the market value of its endowment fund per FTE student and library expenditures per FTE student were less than the average expenditure per FTE student when calculated using the data submitted by applicants for the year 2002–2003.

If a tie still remains after applying the additional point(s), we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118, 34 CFR 75.720 and in 34 CFR 606.31.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Developing HSI Program:

(1) The percentage of Title V project goals relating to the improvement of academic quality that are met or exceeded will increase or be maintained over time.

(2) The percentage of Title V project goals relating to the improvement of student services and student outcomes that are met or exceeded will increase or be maintained over time.

(3) The percentage of Title V project goals relating to the improvement of institutional management and fiscal stability that are met or exceeded will increase or be maintained over time.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: J. Alexander Hamilton, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7583 or by e-mail: *Josephine.Hamilton@ed.gov;* or Sophia McArdle: Telephone: (202) 219–7078 or by e-mail: *Sophia.McArdle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 31, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E5–412 Filed 2–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.031T, 84.031N and 84.031W.

Dates: Applications Available: February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

Deadline for Intergovernmental Review: May 19, 2005.

Eligible Applicants: Institutions of higher education that qualify as eligible institutions under the American Indian Tribally Controlled Colleges and Universities (TCCU), and Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Programs may apply for grants under this notice. These programs are authorized by Title III, Part A of the Higher Education Act of 1965, as amended, and are known as Title III, Part A Programs. To qualify as an eligible institution under any Title III, Part A Program, an institution must satisfy several criteria, including one related to needy student enrollment and one related to average Educational and General (E&G) expenditures for a particular base year. The eligibility requirements are in a Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year 2005 that was published in the **Federal Register** on November 30, 2004 (69 FR 69589) and in program regulations in 34 CFR 607.2 through 607.5. The regulations may be accessed by visiting the following Department of Education Web site: *http://www.ed.gov/news/fedregister.*

Relationship Between Title III, Part A and Hispanic Serving Institution Programs

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HIS) Program, authorized under Title V of the Higher Education Act of 1965, as amended (HEA), may not receive a grant under any Title III, Part A Program. Further, a current Developing HIS Program grantee may not give up its grant under the Developing HIS Program in order to receive a grant under any Title III, Part A Program.

Note 2: An institution that does not fall within the limitation described in Note 1 may apply for a FY 2005 grant under all Title III, Part A Programs for which it is eligible, as well as under the Developing HIS Program. However, a successful applicant may receive only one grant.

Estimated Available Funds: $8,691,201 for new awards under the ANNH Program and $17,748,000 for new awards under the TCCU Program. $15,591,342 for new awards under the SIP. A competition will not be held in FY 2005 for the SIP. Instead, the Department will fund new grants to eligible applicants on the FY 2004 SIP slate. We will fund only Individual Development Grant applications from the FY 2004 SIP slate.

For specific funding information, see the chart in the Award Information section of this notice.

Estimated Award Amount: See chart.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the Title III, Part A Web site for further information on these programs. The address is:*http://www.ed.gov/programs/iduestitle3a/index.html.*

Project Period: 60 months for individual development grants, and 12 months for construction grants under the TCCU Program and renovation grants under the ANNH Program.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SIP, TCCU, and ANNH Programs are all authorized under Title III, Part A of the HEA. Each provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability, and increase their self-sufficiency.

Program Authority: 20 U.S.C. 1057–1059d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 607.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,691,201 for new awards under the ANNH Program and $17,748,000 for new awards under the TCCU Program. $15,591,342 for new awards under the SIP. A competition will not be held in FY 2005 for the SIP. Instead, the Department will fund new grants for eligible applicants on the FY 2004 SIP slate. We will fund only Individual Development Grant applications from the FY 2004 SIP slate.

For specific funding information, see the chart in this section of this notice.

Estimated Award Amount: See chart.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the Title III, Part A Web site for further information on these programs. The address is: *http://www.ed.gov/programs/iduestitle3a/index.html.*

Project Period: 60 months for individual development grants and 12 months for construction grants under the TCCU Program and renovation grants under the ANNH Program.

Program name	Estimated award amount	Estimated number of awards
Alaska Native and Native Hawaiian Program:		
—5-year Individual Development Grants (84.031N and 84.031W).	$500,000 per year	5
—Renovation Grants	$750,000 for 1 year	8
Tribally Controlled Colleges and Universities Program (84.031T):		
—5-year Individual Development Grants	$400,000 per year	7
—Construction and Renovation Grants	$1,500,000 for 1 year	10
Strengthening Institutions Program (83.031A):		
—5-year Individual Development Grants	$365,000 per year	*44

Funding based on FY 2004 slate.

III. Eligibility Information

Eligible Applicants: Institutions of higher education that qualify as eligible institutions under the TCCU, and ANNH Programs may apply for grants under this notice. To qualify as an eligible institution under any Title III, Part A Program, an institution must satisfy several criteria, including one related to needy student enrollment and one related to average E&G expenditures for a particular base year. The eligibility requirements are set forth in a Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year 2005 that was published in the **Federal Register** on November 30, 2004 (69 FR 59589), and in program regulations contained in 34 CFR 607.2 through 607.5. The regulations may be accessed by visiting the following Department of Education Web site: *http://www.ed.gov/news/fedregister.*

Relationship Between Title III, Part A and Hispanic Serving Institution Programs

Note 1: A grantee under the HSI Program, authorized under Title V of the HEA, may not receive a grant under any Title III, Part A Program. Further, a current Developing HSI Program grantee may not give up its grant under the Developing HSI Program in order to receive a grant under any Title III, Part A Program.

Note 2: An institution that does not fall within the limitation described in Note 1 may apply for a FY 2005 grant under all Title III, Part A Programs for which it is eligible, as well as under the Developing HSI Program. However, a successful applicant may receive only one grant.

2. *Cost Sharing or Matching:* There is no cost sharing or matching requirement in any Title III, Part A Program, unless a grantee under the SIP or TCCU Program uses a portion of its grant for establishing or improving an endowment fund. If it does, it must match with non-Federal funds at least the amount of grant funds used for this purpose. 20 U.S.C. 1057(d)(2) and 1059c (c)(3)(B).

IV. Application and Submission Information

1. *Address to Request Application Package:* Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7777 or by e-mail: *Maria.Carrington@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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 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: We have established mandatory page limits for the applications to be submitted under this notice. You must limit your application to the equivalent of no more than 70 pages for an individual development grant and 50 pages for a renovation grant under the ANNH Program; 70 pages for an individual development grant and 50 pages for a construction grant under the TCCU Program 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, including titles and headings. You may single space abstracts, footnotes, quotations, references, captions, tables and forms (including the ED Forms), however, you must still use font size 12.
- Use a font that is 12-point or larger.
- No appendices or attachments should be included with the application. If you include any attachments or appendices, these items will be counted for purposes of the page limit requirement.

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:* February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

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

Deadline for Intergovernmental Review: May 19, 2005.

4. *Intergovernmental Review:* These programs are 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 these programs.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under these programs must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

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.*

a. Electronic Submission of Applications.

Applications for grants under the Title III, Part A Programs—CFDA Numbers 84.031N, 84.031T and 84.031W 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 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 these programs 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.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• 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 acknowledgement 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 acknowledgement 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. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., room 6033, Washington, DC 20006–8513. FAX: (202) 502–7861.

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 any 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: (CFDA Numbers 84.031N, 84.031T and 84.031W), 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 Numbers 84.031N, 84.031T and 84.031W), 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 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: (CFDA Numbers 84.031N, 84.031T and 84.031W), 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

1. *Selection Criteria:* The selection criteria for these programs are in 34 CFR 607.22.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the tie-breaking situations described in 34 CFR 607.23. The Title III, Part A Program regulations require that we award one additional point to an application from an institution of higher education (IHE) that has an endowment fund for which the 2002–2003 market value per FTE student was less than the comparable average per FTE student at a similar type IHE. We also award one additional point to an application from an IHE that had expenditures for library materials in 2002–2003 per FTE student that were less than the comparable average per FTE student at a similar type IHE.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student and library expenditures per FTE student, were less than the average expenditure per FTE student when calculated using the data submitted by applicants for the year 2002–2003.

If a tie remains after applying the additional point(s), we will determine the ranking of applicants based on the lowest combined library expenditures per FTE student and endowment values per FTE student.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and 607.31.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Title III, Part A Programs: (1) The percentage of Title III, Part A project goals relating to the improvement of academic quality that are met or exceeded will increase or be maintained over time. (2) The percentage of Title III, Part A goals relating to the improvement of student services and student outcomes that are met or exceeded will increase or be maintained over time. (3) The percentage of Title III, Part A project goals relating to the improvement of institutional management and fiscal stability that are met or exceeded will increase or be maintained over time.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7777 or by e-mail: *Maria.Carrington@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 31, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E5–413 Filed 2–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Migrant and Seasonal Farmworkers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.128G.

DATES: *Applications Available:* February 3, 2005.

Deadline for Transmittal of Applications: March 7, 2005.

Deadline for Intergovernmental Review: May 4, 2005.

Eligible Applicants: State designated agencies (interpreted to mean designated State agencies as defined in section 7(8) of the Rehabilitation Act of 1973, as amended); nonprofit agencies working in collaboration with a State agency; and local agencies working in collaboration with a State agency.

Estimated Available Funds: $694,608.

The estimated available funds will be used to support projects in FY 2005. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards in FY 2006 from the list of

unfunded applicants from this competition.

Estimated Range of Awards: $170,000–$190,000.

Estimated Average Size of Awards: $180,000.

Estimated Number of Awards: 4.

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

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide grants for vocational rehabilitation services to individuals with disabilities who are migrant and seasonal farmworkers, (individuals who have been determined in accordance with rules prescribed by the Secretary of Labor), and to the family members who are residing with those individuals (whether or not those family members are individuals with disabilities).

Program Authority: 29 U.S.C. 774.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 86. (b) The regulations in 34 CFR part 369.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $694,608.

The estimated available funds will be used to support projects in FY 2005. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $170,000–$190,000.

Estimated Average Size of Awards: $180,000.

Estimated Number of Awards: 4.

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

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State designated agencies (interpreted to mean designated State agencies as defined in section 7(8) of the Rehabilitation Act of 1973, as amended); nonprofit agencies working in collaboration with a State agency; and local agencies working in collaboration with a State agency.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Migrant and Seasonal Farmworkers Program. *See* 29 U.S.C. 774(a)(1).

IV. Application and Submission Information

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

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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.

3. *Submission Dates and Times: Applications Available:* February 3, 2005.

Deadline for Transmittal of Applications: March 7, 2005.

Applications for grants under this competition 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: May 4, 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 competition.

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

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

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.*

a. Electronic Submission of Applications.

Applications for grants under the Migrant and Seasonal Farmworkers Program—CFDA Number 84.128G 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 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 competition 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.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• 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 acknowledgement 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 acknowledgement 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: Theresa DeVaughn, U.S. Department of Education, 400 Maryland Avenue, SW., room 5045, Potomac Center Plaza, Washington, DC 20202–2649. FAX: (202) 245–7593.

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: (CFDA Number 84.128G), 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 84.128G), 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 Application 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: (CFDA Number 84.128G), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration (RSA) has established the following performance measure for the Migrant and Seasonal Farmworkers Program and will use this measure to assess the effectiveness of the program.

- Percentage of individuals served who were placed in employment.

Each grantee must annually report on this measure in its annual performance report. In addition, the Migrant and Seasonal Farmworkers Program is part of the Administration's job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are: Entered employment (percentage employed in the first quarter after program exit); retention in employment (percentage of those employed in the first quarter after exit that were still employed in the second and third quarter after program exit); earnings increase (percentage change in earnings pre-registration to post-program and first quarter after exit to third quarter after exit); and efficiency (annual cost per participant). The Department is currently working toward the implementation of these common measures. Each grantee will be required to collect and report data for the common measures when they are implemented.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Theresa DeVaughn, U.S. Department of Education, 400 Maryland Avenue, SW., room 5045, Potomac Center Plaza, Washington, DC 20202–2649. Telephone: (202) 245–7321 or by e-mail: *theresa.devaughn@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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: *http://www.gpoaccess.gov/nara/index.html*.

Dated: January 28, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–414 Filed 2–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.234R.

DATES: *Applications Available:* February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

Deadline for Intergovernmental Review: May 19, 2005.

Eligible Applicants: Employers, nonprofit agencies or organizations, designated State units, labor unions, community rehabilitation program providers, trade associations, Indian tribes, tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

In order to ensure an equitable distribution of funds among the States as required by statute, grant awards will be made only to organizations that provide job and career opportunities for individuals with disabilities within the State in which the organization is located. Only organizations that are located in the State where the organization applies to provide services will be considered for a grant.

To further ensure the equitable distribution of funds, to the extent funds are available, grants will be awarded to those projects that propose to serve those unserved or underserved individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations.

Estimated Available Funds: $19,567,593.

The estimated available funds will be used to support projects in FY 2005. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 77.

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

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Projects With Industry program creates and expands job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process. Projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placements and career advancement services.

Program Authority: 29 U.S.C. 795.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR part 379.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $19,567,593.

The estimated available funds will be used to support projects in FY 2005. Contingent upon the availability of funds and the quality of applications, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 77.

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

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Employers, nonprofit agencies or organizations, designated State units, labor unions, community rehabilitation program providers, trade associations, Indian tribes, tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

In order to ensure an equitable distribution of funds among the States as required by statute, grant awards will be made only to organizations that provide job and career opportunities for individuals with disabilities within the State in which the organization is located. Only organizations that are located in the State where the organization applies to provide services will be considered for a grant.

To further ensure the equitable distribution of funds, to the extent funds are available, grants will be awarded to those projects that propose to serve those unserved or underserved individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations.

2. *Cost Sharing or Matching:* See 34 CFR 379.40.

IV. Application and Submission Information

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

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.234R.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

3. *Submission Dates and Times: Applications Available:* February 3, 2005.

Deadline for Transmittal of Applications: March 21, 2005.

Applications for grants under this competition 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: May 19, 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 competition.

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

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

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.*

a. Electronic Submission of Applications

Applications for grants under the Projects With Industry program—CFDA Number 84.234R 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 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 competition 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 quality 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.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- 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 acknowledgement 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 acknowledgement 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: Kerrie Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 5048, Potomac Center Plaza, Washington, DC 20202–2800. FAX: (202) 245–7593.

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 must 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: (CFDA Number 84.234R), 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 84.234R), 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: (CFDA Number 84.234R), 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

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 75.210.

2. *Review and Selection Process:* The procedures used for reviewing and selecting an application for an award are in 34 CFR 75.215 through 75.222.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and 34 CFR part 379.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has established four performance measures for the Projects With Industry program. The measures are percentage of individuals served who were placed in competitive employment, average increase in weekly earnings experienced by individuals placed in competitive employment, percentage of previously unemployed individuals served who were placed in competitive employment, and cost per placement. Each grantee must submit an annual performance report documenting its success in addressing these performance measures, as well as the compliance indicators required by the program regulations in 34 CFR part 379, Subpart F.

In addition, the Projects With Industry program is part of the Administration's job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are—

entered employment (percentage of individuals employed in the first quarter after program exit); retention in employment (percentage of individuals employed in the first quarter after exit that were still employed in the second and third quarters after program exit); earnings increase (percentage change in earnings pre-registration to post-program and first quarter after exit to third quarter after exit); and efficiency (annual cost per participant). The Department is currently working toward implementation of these common measures. Each grantee will be required to collect and report data for the common measures when implemented.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kerrie Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 5048, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7281 or by e-mail: *Kerrie.Brown@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 31, 2005.

John H. Hager,

Assistant Secretary for Special Education and RehabilitativeServices.

[FR Doc. E5–415 Filed 2–2–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, March 7, 2005, 8:30 a.m. to 5 p.m., and Tuesday, March 8, 2005, 8:30 a.m. to 12 p.m.

ADDRESSES: The Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Karen Talamini; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, Independence Avenue, Washington, DC 20585; Telephone: (301) 903–4563.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from the Office of Science.
- News from the Office of Basic Energy Sciences.
- BESAC discussion.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Karen Talamini at (301) 903–6594 (fax) or *karen.talamini@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on January 31, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–2100 Filed 2–2–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–46, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, February 12, 2005, 8:30 a.m.–12 noon.

ADDRESSES: Morgan Township Administration Building, 3141 Chapel Road, Morgan Township, Ohio.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m. Call to Order.
8:35 a.m. Updates and Announcements.
9 a.m. Status of Silos Disposition Contracts.
9:30 a.m. Post-Closure Public Involvement Legacy Management Community Involvement Plan for Fernald Local Stakeholder Organizations (LSOs).
10:15 a.m. Break.
11:15 a.m. Review FCAB History Outline.
11:40 a.m. FY 2005 Meeting Plan.
11:50 a.m. Public Comment.
12 p.m. Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 calendar days before the date of meeting due to programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on January 31, 2005.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–2099 Filed 2–2–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 9, 2005, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Discussion of the transfer of responsibility for newly generated waste from the Environmental Management Program to Oak Ridge National Laboratory and the Y–12 National Security Complex.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on January 31, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–2101 Filed 2–2–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Coal Survey Program to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by March 7, 2005. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX ((202) 395–7285) is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX ((202) 287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1, 3, 4, 5, 6A, 6Q, 7A, and 20, "Coal Program Package".

2. Energy Information Administration.

3. OMB Number 1905–0167.

4. Revision and three-year approval requested—The EIA–3 will add a schedule to collect data from coal synfuel plants on the quantity of coal synfuel distributed or sold by type of end-use consumer and destination state. The EIA–5 will expand transport mode options to include two additional categories: (1) Transport by ship on the Great Lakes and (2) transport by tramway or conveyor. The EIA–6A will add a new consumer type, Coal Synfuel plants for reporting coal distributed to coal synfuel plants. The EIA–7A will collapse two consumer classes: coal mining companies and coal dealers for reporting open market sales since the individual classes are not published; rather they are published as aggregate data.

5. Mandatory.

6. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.

7. Business or other for-profit; Federal Government; State, local or tribal government.

8. 7,957 hours.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, January 27, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 05–2082 Filed 2–2–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–58–000]

ConocoPhillips Company, and Equilon Enterprises LLC d/b/a/ Shell Oil Products U.S., Complainant, v. Los Angeles Department of Water and Power, Respondent; Notice of Complaint

January 27, 2005.

Take notice that on January 26, 2005, ConocoPhillips Company and Equilon Enterprises LLC d/b/a/ Shell Oil Products US (collectively, Complainants) filed a formal complaint against Los Angeles Department of Water and Power (LADWP) pursuant to 16 U.S.C. alleging that LADWP has instituted rates for standby service which are unjust and unreasonable under section 206 and under the Public Utility Regulatory Policies Act of 1978.

The Complainants state that copies of the complaint were served on the General Manager of LADWP.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 16, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–404 Filed 2–2–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–2–000, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Filings

January 27, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Service Corporation

[Docket No. EC05–2–000]

Take notice that on January 24, 2005, American Electric Power Service Corporation (AEP), on behalf of its affiliate, AEP Texas Central Company (TCC), submitted supplemental information regarding its October 7, 2004 application for authorization of a disposition of jurisdictional facilities.

Comment Date: 5 p.m. eastern time on February 7, 2005.

2. USGen New England, Inc., Town of Rockingham, Vermont, Bellows Falls Power Company, LLC

[Docket No. EC05–41–000]

Take notice that on January 25, 2005, USGen New England, Inc. (USGenNE), the Town of Rockingham, Vermont (Town), and Bellows Falls Power Company, LLC (BFPC) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization to permit USGenNE to transfer to the Town jurisdictional facilities associated with USGenNE's approximately 49 MW Bellows Falls hydroelectric generating facility and the lease of those facilities from the Town to BFPC.

Comment Date: 5 p.m. eastern time on February 15, 2005.

3. Idaho Power Company

[Docket No. ER97–1481–007]

Take notice that on January 19, 2005, Idaho Power Company (Idaho Power) submitted its response to the Commission's deficiency letter issued December 20, 2004 requesting additional information regarding Idaho Power's September 27, 2004 filing in Docket No. ER97–1481–004, as amended on October 8, 2004 in ER97–1481–005.

Idaho Power Company states that copies of the filing were served on parties on the official service list in Docket No. ER97–1481.

Comment Date: 5 p.m. eastern time on February 9, 2005.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–1101–007]

Take notice that on January 19, 2005, PJM Interconnection, L.L.C. (PJM), submitted a compliance filing pursuant to the Commission's Order issued December 20, 2004 order in Docket No. ER03–1101–001, et al., 109 FERC ¶ 61,286 (2004). d collateral. PJM requests an effective date of March 1, 2005.

PJM states that copies of this filing have been served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: 5 p.m. eastern time on February 9, 2005.

5.Jersey Central Power & Light Company

[Docket No. ER05–64–001]

Take notice that on January 19, 2005, Jersey Central Power & Light Company, a FirstEnergy Company, (Jersey Central) submitted an amendment to its October 22, 2004 filing in Docket No. ER05–64–000, pursuant to the Commission's deficiency letter issued December 20, 2004.

Jersey Central states that copies of the filing have been served on regulators in New Jersey, Atlantic City Electric Company, PJM and FERC Staff.

Comment Date: 5 p.m. eastern time on February 9, 2005.

6.PJM Interconnection, L.L.C.

[Docket No. ER05–85–004]

Take notice that on January 19, 2005, PJM Interconnection, L.L.C. (PJM), and Duquesne Light Company (Duquesne Light), submitted a compliance filing pursuant to the Commission's Order issued December 20, 2004 in Docket No. ER05–85–000, et al., 109 FERC ¶ 61,299.

PJM and Duquesne Light state that copies of this filing were served upon all persons on the service list in Docket No. ER05–85.

Comment Date: 5 p.m. eastern time on February 9, 2004.

7. Kansas City Power & Light Company

[Docket No. ER05–177–004]

Take notice that on January 19, 2005, Kansas City Power & Light Company

(KCPL) submitted a compliance filing pursuant to the Commission's order issued December 28, 2004 in Docket No. ER05–177–000. KCPL states that this filing pertains to service schedules for the City of Higginsville, Missouri.

KCPL states that copies of the filing were served upon the City of Higginsville, Missouri as well as the Missouri Public Service Commission and the Kansas State Corporation Commission.

Comment Date: 5 p.m. eastern time on February 9, 2005.

8. Kansas City Power & Light Company

[Docket No. ER05–177–005]

Take notice that on January 19, 2005, Kansas City Power & Light Company (KCPL) submitted a compliance filing pursuant to the Commission's order issued December 28, 2004 in Docket No. ER05–177–000. KCPL states that this filing pertains to service schedules for the City of Garnett, Kansas.

KCPL states that copies of the filing were served upon the City of Garnett, Kansas as well as the Missouri Public Service Commission and the Kansas State Corporation Commission.

Comment Date: 5 p.m. eastern time on February 9, 2005.

Standard Paragraph

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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–406 Filed 2–2–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0018; FRL–7867–7]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Polymeric Coating of Supporting Substrates Facilities, ICR Number 1284.07, OMB Number 2060–0181

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0018, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Compliance (2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0018, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in

EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Polymeric Coating of Supporting Substrates Facilities (40 CFR part 60, subpart VVV) (Renewal).

Abstract: New Source Performance Standards (NSPS) subpart VVV applies to each coating operation and any onsite mix preparation equipment used to prepare coating for the polymeric coating of supporting substrates, that commences construction, modification or reconstruction after April 30, 1987. The rule establishes standards for volatile organic compound (VOC) use, emission reduction limits, and for capture and recovery of VOC emissions. The monitoring and recordkeeping requirements include: maintain records of startups, shutdowns, malfunctions, periods where the continuous monitoring system is inoperative 60.7(b), and of all measurements including performance test measurements, operating parameters of monitoring device results for catalytic or thermal incinerator, carbon adsorption system, condensation system, vapor capture system and/or total enclosure 60.744(c–h); and monitor actual 12-month volatile organic compounds (VOC) use and make semiannual estimate of projected VOC use, if affected facility uses less than 95 Mg/year of VOC or is subject to provisions specified in § 60.742(c)(3) and other information required by this part recorded in a file suitable for inspection. The recordkeeping, monitoring and reporting requirements allow the regulatory agencies to determine compliance with the standard. One-time reports are required to identify the affected facilities and the compliance method used. Semiannual reports of compliance and quarterly reports of monitoring exceedances and periods of noncompliance are used to verify compliance. Annual reports of when an affected facility first exceeds a projected VOC use limit or the 12-month actual VOC limit are used to determine the applicable requirements. Since none of the required reports to the Agency have been deemed confidential business information, they will not be treated as such. Responses are mandatory (40 CFR part 60, subpart VVV).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable. The recordkeeping, notification and reporting requirements of the standard are critically important as they allow the Agency to determine to which facilities the standards apply and they enable the Agency to monitor initial and ongoing compliance with the standards. As much as possible, in order to reduce the burden, the compliance monitoring and recordkeeping requirements are designed to cover parameters that are already being monitored as part of the manufacturing process.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 83 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of facilities performing polymeric coating of supporting substrates.

Estimated Number of Respondents: 53.

Frequency of Response: Initial, on occasion, quarterly, semiannually, monthly, annually.

Estimated Total Annual Hour Burden: 12,623 hours.

Estimated Total Annual Costs: $1,410,367, which includes $48,500 annualized capital/startup costs, $556,500 annual O&M costs, and $805,367 annual labor costs.

Changes in the Estimates: There is a decrease of 1,743 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the estimate of shutdowns and malfunctions occurring annually, a correction in the number of reported respondents, and a recalculation of burden resulting from reporting activities.

Dated: January 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2062 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2004–0013; FRL–7867–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Facility Ground-Water Monitoring Requirements (Renewal), EPA ICR Number 0959.12, OMB Control Number 2050–0033

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2004–0013, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sara Rasmussen, Office of Solid Waste, mail code 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8399; fax number: 703–308–8617; e-mail address: *rasmussen.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the

procedures prescribed in 5 CFR 1320.12. On November 26, 2004 (69 FR 68898) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment in support of this information collection.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2004–0013, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–1744. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Facility Ground-Water Monitoring Requirements (Renewal).

Abstract: This ICR examines the ground-water monitoring standards for permitted and interim status facilities at 40 CFR parts 264 and 265, as specified. The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected (detection monitoring), then confirmed (compliance monitoring), and if necessary, are required to be cleaned up (corrective action). Each of these tiers requires collection and analysis of ground-water samples. Owners or operators that conduct ground-water monitoring are required to report information to the oversight agencies on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to groundwater, and to establish a program whereby any contamination is expeditiously cleaned up as necessary to protect human health and environment. Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are to protect the environment. Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as "interim status." Owners and operators of interim status facilities also must comply with standards set under section 3004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 118 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities that operate surface impoundments, waste piles, land treatment units, and landfills which manage hazardous waste regulated under RCRA.

Estimated Number of Respondents: 824.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 96,913.

Estimated Total Annual Cost: $24,015,000, which includes $3,000 annual capital/startup costs, $18,070,000 annual O&M costs and $5,942,000 annual labor costs.

Changes in the Estimates: There is no increase of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. There is a slight increase in cost due to inflation.

Dated: January 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2063 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0017; FRL–7867–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Underground Injection Control Program (Renewal); EPA ICR Number 0370.19; OMB Control Number 2040–0042

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is

pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0017, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, MC 4104T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert E. Smith, Office of Ground Water and Drinking Water, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3895; fax number: (202) 564–3756; e-mail address: *smith.robert-eu@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 25, 2004 (69 FR 62267), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0017, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Underground Injection Control Program (Renewal).

Abstract: The Underground Injection Control (UIC) Program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water (USDWs) from contamination by injected fluids. Owners/operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State UIC primacy agency. States must report to EPA on permittee compliance and related information. The mandatory information is reported using standardized forms, and the regulations are codified at 40 CFR parts 144 through 148. The data are used to ensure the protection of USDWs from UIC authorities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are owners and operators of underground injection wells, state UIC primacy agencies, Puerto Rico, the U.S. Trust Territories, Indian Tribes, Alaska's Native Villages and, in some instances, U.S. EPA Regional offices.

Estimated Number of Respondents: 41,141.

Frequency of Response: Varies.

Estimated Total Annual Hour Burden: 1,334,054.

Estimated Total Annual Cost: $135,355,000, includes $89,415,000 annualized capital or O&M costs and $45,941,000 annual labor costs.

Changes in the Estimates: There is an increase of 242,109 hours in the total estimated annual burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is related to an expected increase in activities under the 1999 Class V Rule associated with regulatory deadlines for closure of large-capacity cesspools and closure/permitting of motor vehicle waste disposal wells that will occur during the clearance period. Also, this ICR burden reflects several adjustments in assumptions, including inventories of all well classes and changes to the number of responses or unit burdens for certain activities, based on recent consultations.

Dated: January 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2064 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0017; FRL–7868–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Combined Sewer Overflow Control Policy (Renewal), EPA ICR Number 1680.04, OMB Control Number 2040–0170

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0017, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-DOCKET@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Joel C. Wolf, Environmental Protection Agency, Water Permits Division, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2228; fax number: 202–564–6392; e-mail address: *wolf.joel@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 12, 2004 (69 *FR* 49895), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment that did not address the renewal ICR in any way. No response was necessary.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0017, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Combined Sewer Overflow Control Policy (Renewal).

Abstract: The information to be collected under this request is the information recommended in the CSO Control Policy that will be developed by municipalities with combined sewer systems that have combined sewer overflows (CSOs). Specifically, the information is the documentation that the municipalities have implemented the nine minimum controls specified in the CSO policy, the long-term control plan that the municipalities must develop and implement to achieve compliance with the requirements of the Clean Water Act and applicable state water quality standards (WQS), and compliance monitoring data for demonstrating compliance with applicable WQS and National Pollutant Discharge Elimination System (NPDES) permit conditions. The first two information submittals are one-time submittals; the last element will be submitted semi-annually as part of the municipalities' Discharge Monitoring Reports (DMRs). EPA will use this information to determine how well the CSO Control Policy is being implemented at the state and local level and to prepare the performance reports required under the Government Performance and Results Act (GPRA). The information to be collected under this information collection is necessary to determine the program's achievement of GPRA performance measures.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 515 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: municipalities with combined sewer systems.

Estimated Number of Respondents: 776.

Frequency of Response: One-time for selected items; semi-annually for others.

Estimated Total Annual Hour Burden: 400,542.

Estimated Total Annual Cost: $14,715,366, which includes $155,664 in Capital Expense, $0 in O&M costs, and $14,559,702 in Respondent Labor Costs.

Changes in the Estimates: There is a decrease of 179,502 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects a decrease in the number of communities needing to come into compliance with the CSO Policy. Some CSO communities have already completed some of the requirements. Additionally, this change in the burden is the result of data and information collected from EPA Regions and conversations with EPA Regional and state CSO program staff during preparation of EPA's Report to Congress on Impacts and Control of CSOs and SSOs.

Dated: January 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2065 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0040; FRL–7868–2]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Municipal Waste Combustors (Renewal), ICR Number 1506.10, OMB Number 2060–0210

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0040, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 14, 2004 (69 *FR* 55430) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0040, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for Municipal Waste Combustors (40 CFR part 60, subparts Ea and Eb) (Renewal)

Abstract: The New Source Performance Standards (NSPS) for subparts Ea and Eb were proposed on December 20, 1980, and September 20, 1994 respectively, and promulgated on February 11, 1991 and December 19, 1995, respectively. Both of these standards apply to municipal waste combustors with unit capacities greater than 225 megagrams per day. Owners or operators of the affected facilities must make one-time-only notifications and reports and must keep records of all facilities subject to NSPS requirements. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The pollutants of concern for subpart Ea are metals, municipal waste combustor (MWC) organics, MWC acid gases, and nitrogen oxides. In subpart Eb the additional pollutants of concern are cadmium (Cd), lead (Pb), and mercury (Hg). Subparts Ea and Eb require owners and operators with unit capacity above 225 megagrams per day to notify the agency of intent to construct and initiate operation of a new, modified or reconstructed MWC. The notification must contain supporting information regarding unit design capacity, the calculations used to determine capacity, and estimated startup dates.

Owners and operators must submit semiannual and annual compliance reports. In addition, facilities subject to subpart Eb are required to keep records of the weekly amount of carbon used for activated carbon injection and to calculate the estimated hourly carbon injection rate for hours of operation as a means of determining continuous compliance for Hg. Annual reports of excess emissions are required under subpart Ea, while semiannual reports of excess emissions are required under subpart Eb. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to the standard.

Any owner or operator subject to subpart Ea will maintain a file of these measurements, and retain the file for at least two years. For those facilities subject to subpart Eb all records are required to be maintained at the source for a period of five years.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the

pollution control devices are properly installed and operated, and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance was achieved. The information generated by monitoring, recordkeeping and reporting requirements described in this ICR is used by the Agency to ensure that facilities affected by the standard continue to operate the control equipment and achieve continuous compliance with the regulation.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 198 hours per response. Burdens means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of municipal waste combustors.

Estimated Number of Respondents: 12.

Frequency of Response: Initially, quarterly, semiannually, annually.

Estimated Total Annual Hour Burden: 20,421 hours.

Estimated Total Annual Costs: $1,635,293, which includes $60,000 annualized capital/startup costs, $99,000 (rounded) annual O&M costs, and $1,476,293 annual labor costs.

Changes in the Estimates: There is an increase of 8,536 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to an increase in the number of sources from eight to twelve from the most recently approved ICR.

Dated: January 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2066 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0024; FRL–7868–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; Source Compliance and State Action Reporting (Renewal), ICR Number 0107.08, OMB Number 2060–0096

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0024, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Betsy Metcalf, Enforcement and Targeting Data Division, Office of Compliance, 2222A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–5962; fax number: (202) 564–0032; e-mail address: *metcalf.betsy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 1, 2004 (69 FR 30897), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0024, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information, (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in

EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Source Compliance and State Action Reporting (Renewal).

Abstract: Source Compliance and State Action Reporting is an activity whereby State, District, Local, and Commonwealth governments (hereafter referred to as "states/locals" or "state and local agencies") make air compliance information available to the U.S. Environmental Protection Agency (EPA or the Agency) on a cyclic basis via input to the Air Facility System (AFS). The information provided to EPA includes compliance activities and determinations, and enforcement activities. EPA uses this information to assess progress toward meeting emission requirements developed under the authority of the Clean Air Act (CAA or the Act) to protect and maintain the atmospheric environment and the public health. The EPA and many of the state and local agencies access the data in AFS to assist them in the management of their air pollution control programs. This renewal information collection request (ICR) affects oversight of approximately 41,500 stationary sources by 93 state and local agencies and the Federal EPA, and is expected to require 144,089 labor hours per year and cost approximately $5.5 million annually. State and local agency burdens and costs are estimated as 110,809 hours and approximately $3.7 million annually. On average, this burden amounts to approximately one-third of a full-time equivalent employee for each small state and local agency. three-fourths of a full-time equivalent employee for each medium sized state and local agency and one and one-third of a full-time equivalent employee for each large sized state and local agency for national reporting of compliance- and enforcement-related data under all of the applicable Clean Air Act programs. The first notice for the renewal of this collection sought to add the following new reporting requirements: Addition of the subpart identifier in the air program record, addition of the pollutant code to stack test actions, addition of the High Priority Violator (HPV) "Violation Discovered" activity and date, addition of the HPV violation type code and violating pollutants, revised reporting frequency for state/local agencies from quarterly to 30 days, reporting all Partial Compliance Evaluations (PCEs), and the reporting of Permit Program Data Elements (PPDEs).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18,468 hours per response (six responses per year for a state/local agency). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, local or tribal government.

Estimated Number of Respondents: 93.

Frequency of Response: Six times per year.

Estimated Total Annual Hour Burden: 110,809 hours.

Estimated Total Capital Annual Costs: $3,699,481, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $3,699,481 annual labor costs.

Changes in the Estimates: There is an increase of 25,313 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase was attributable to several new data elements added to the new Minimum Data Requirements (MDRs) in this renewal ICR, with an adjustment to the baseline count of hours. The new MDRs will not be effective until October 1, 2005.

Dated: January 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2067 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2004–0013; FRL–7868–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application for Reference and Equivalent Method Determination (Renewal), EPA ICR Number 0559.08, OMB Control Number 2080–0005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2004–0013, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Hunike, Environmental Protection Agency, Office of Research and Development, Human Exposure and Atmospheric Sciences Division, Process Modeling Research Branch, Mail Code D205–03, Research Triangle Park, NC 27711; telephone number: (919) 541–3737; fax number: (919) 541–1153; e-mail: *hunike.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 27, 2004 (69 *FR* 52663), EPA sought comments on this ICR pursuant

to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. ORD–2004–0013, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Application for Reference and Equivalent Method Determination (Renewal)

Abstract: To determine compliance with the national ambient air quality standards (NAAQS), State air monitoring agencies are required to use, in their air quality monitoring networks, air monitoring methods that have been formally designated by the EPA as either reference or equivalent methods under EPA regulations at 40 CFR part 53. A manufacturer or seller of an air monitoring method (*e.g.* an air monitoring sampler or analyzer) that seeks to obtain such EPA designation of one of its products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information, under the provisions of part 53, to determine whether the particular method should be designated as either a reference or equivalent method. After a method is designated, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. If the method designated is a method for fine particulate matter ($PM_{2.5}$), the applicant must also submit checklist information confirmed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of the designated method are manufactured in an ISO 9001-registered facility. Also, an applicant must submit a minor application to seek approval for any proposed modifications to previously designated methods.

A response to this collection of information is voluntary, but it is required to obtain the benefit of EPA designation under 40 CFR part 53. Submission of some information that is claimed by the applicant to be confidential business information may be necessary for the EPA to make a reference or equivalent method determination. The confidentiality of any submitted information identified as confidential business information by the applicant will be protected in full accordance with 40 CFR 53.15 and all applicable provisions of 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 860 hours per response full application and 30 hours per request for modification for a combined average of 524 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: primarily manufacturers and vendors of ambient air quality monitoring instruments that are used by state and local air quality monitoring agencies in their federally required air surveillance monitoring networks, and agents acting for such instrument manufacturers or vendors.

Estimated Number of Respondents: 19.

Frequency of Response: Once per application, plus requests for modifications as needed.

Estimated Total Annual Hour Burden: 4,718 hours.

Estimated Total Annual Cost: $426,966, including annualized capital/startup cost of $19,651, O&M cost of $81,408, and respondent labor costs of $325,907.

Changes in the Estimates: There is no change in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: January 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2068 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0095; FRL–7868–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; TSCA Sec. 8(a) Preliminary Assessment Information Rule (PAIR); EPA ICR No. 0586.10, OMB No. 2070–0054

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID Number OPPT–2004–0095, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 8, 2004, EPA sought comments on this renewal ICR (69 FR 31993) pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the Supporting Statement of the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2004–0095, which is available for public viewing at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: TSCA Sec. 8(a) Preliminary Assessment Information Rule (PAIR).

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes EPA to promulgate rules under which manufacturers, importers and processors of chemical substances and mixtures must maintain records and submit reports to EPA. EPA has promulgated the Preliminary Assessment Information Rule (PAIR) under TSCA section 8(a). EPA uses PAIR to collect information to identify, assess and manage human health and environmental risks from chemical substances, mixtures and categories. PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures or categories. Chemicals identified by EPA or any other federal agency, for which a justifiable information need for production, use or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question.

Responses to the collection of information are mandatory (*see* 40 CFR part 712). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 30 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers or importers of chemical substances, mixtures or categories.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 11.

Estimated Total Annual Burden on Respondents: 580 hours.

Estimated Total Annual Costs: $48,972.

Changes in Burden Estimates: This request reflects a decrease of 2,775 hours (from 3,355 hours to 580 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease is attributable to a reduction in the assumed number of PAIR reports filed annually, and in a reduction in the annual average numbers of respondents (reporting sites). The change in burden represents an adjustment.

Dated: January 27, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2070 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0098; FRL–7869–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission; EPA ICR No. 1139.07, OMB No. 2070–0033

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated cost.

DATES: Additional comments may be submitted on or before March 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID Number OPPT–2004–0098, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 30, 2004, EPA sought comments on this renewal ICR (69 FR 39464). EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments during the comment period, which are addressed in the Supporting Statement of the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2004–0098, which is available for public viewing at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission.

Abstract: Section 4 of the Toxic Substances Control Act (TSCA) is designed to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors, and that the results of such testing are made available to EPA. EPA uses the information collected under the authority of TSCA section 4 activity to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

EPA must assure that appropriate tests are performed on a chemical if it decides: (1) That a chemical being considered under TSCA section 4(a) may pose an "unreasonable risk" or is produced in "substantial" quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data. Rules and consent orders under TSCA section 4 require that one manufacturer or processor of a subject chemical perform the specified testing and report the results of that testing to EPA. TSCA section 4 also allows a manufacturer or processor of a subject chemical to apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

Responses to the collection of information are mandatory (*see* 40 CFR part 790). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 142 hour per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain

or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, use, distribute or dispose of chemicals.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 396.

Estimated Total Annual Burden on Respondents: 203,014 hours.

Estimated Total Annual Costs: $8,664,319.

Changes in Burden Estimates: This request reflects a decrease of 979,560 hours (from 1,182,574 hours to 203,014 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease is due to a re-estimation of the numbers of test rules and enforceable consent agreements that the Agency will issue, and a re-estimation of the expected level of testing remaining to be done under the HPV Challenge Program. In addition, the burden related to an initiative that was previously included, has been transferred to another ICR. The change in burden represents an adjustment.

Dated: January 27, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–2071 Filed 2–2–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 72]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to (1) evaluate whether the proposed collection is necessary for the paper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Written comments should be received on or before March 7, 2005 to be assured of consideration.

ADDRESSES: Direct all comments to David Rostker, Officer of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503 (202) 395–3897.

Title and Form Number: Export-Import Bank of the United States Long-Term Preliminary Commitment and Final Commitment Application, EIB 95–10.

OMB Number: 3048–0013.

Type of Review: Revision and extension of a currently approved collection.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to determine eligibility for the loan and guarantee programs.

Affected Public: Business or other for-profit.

Respondents: Entities involved in the provision of financing or arranging of financing for foreign buyers of U.S. exports.

Estimated Annual Respondents: 70.

Estimated Time per Respondent: 1.5 hours.

Estimated Annual Burden: 105 hours.

Frequency of Response: When applying for a long-term preliminary or final commitment.

Dated: January 31, 2005.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB 3048-0013
Expires 1/31/2005

Export-Import Bank of the United States

APPLICATION FOR LONG-TERM LOAN OR GUARANTEE

This application is to be used for direct loan and guarantee transactions with financed amounts over $10 million (excluding financed premium), typically with tenors over seven years. It is also to be used for certain Ex-Im Bank products and programs regardless of transaction size or tenor including: Large Aircraft, Limited Recourse and Structured Financing, and Tied Aid. (To request a Credit Guarantee Facility, please complete the Medium-Term application.)

Additional information on how to apply for Ex-Im Bank long-term loans and guarantees can be found at Ex-Im Bank's web site **http://www.exim.gov/tools/how_to_apply.html**

Send this completed application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, DC 20571. Ex-Im Bank will also accept e-mailed PDF and faxed applications. Please note that applications must be PDF scans of original applications and all required application attachments. (Fax number 202.565.3380, e-mail **exim.applications@exim.gov**). Hard copies of required supporting documentation may still be required for limited recourse and structured financing requests.

APPLICATION FORM

1. COMMITMENT OR FINANCING TYPE REQUESTED

A. Product

- • Comprehensive Guarantee
- • Political Risk Guarantee
- • Direct Loan
- • Preliminary Commitment - See Preliminary Commitment Fact Sheet for eligibility criteria. A justification for a Preliminary Commitment is to be attached. (http://www.exim.gov/pub81.html)

B Conversion of a Preliminary Commitment or a Letter of Interest

• • No • • Yes. The Ex-Im Bank reference number is: _____

C. Resubmission • • Check if this is a resubmission of an application that was previously deemed incomplete or was withdrawn for other reasons. The Ex-Im Bank reference number is: _____

2. PARTICIPANTS:

Applicant name: _____ Duns #: _____

Contact person: _____ Phone #: _____

Position title: _____ Fax #: _____

Street address: _____ E-mail: _____

City: _____ State/Province: _____ Nine-digit zip code: _____

Country: _____ Taxpayer ID #: _____

Number of employees: _____

Applicant's role in the transaction: • exporter • buyer/ borrower • lender (if lender is applicant, lenders mandate must be attached)

Primary contact point for Ex-Im Bank inquiries on this transaction: • • exporter • • lender • • borrower

OMB 3048-0014
Expires 1/31/2005

Exporter. The exporter is the U.S. entity that contracts with the buyer for the sale of the U.S. goods and services.

• • • • Check if the exporter is the applicant. Otherwise, complete the information below for each exporter, including ancillary service providers.

Exporter name:	Duns #:	
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Nine digit zip code:
Taxpayer ID #:		
Number of employees:		

Supplier. The supplier is the U.S. company that manufactures the goods and/or performs the services to be exported.

• • Check if the supplier is also the exporter. Otherwise, complete the information below for each supplier, including ancillary service providers.

Supplier name:	Duns #:	
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Nine digit zip code:
Taxpayer ID #:		
Number of employees:		

Borrower. The borrower is the entity that agrees to repay the loan.

• • Check if the borrower is the applicant. If not, complete the information below.

Borrower name:		Duns #:
Contact person:		Phone #:
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Postal code:
Taxpayer ID #:		
Country:		

EIB-03-02
Revised 1/2005

OMB 3048-0014
Expires 1/31/2005

Guarantor. The guarantor is the person or entity that agrees to repay the credit if the borrower does not. Complete the information below for each guarantor if a guarantor is offered or required.

Guarantor name:		Duns #:
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Postal code:
Country		

Buyer. The buyer is the entity that contracts with the exporter for the purchase of the U.S. goods and services. Check if the buyer is also the • *borrower or • *guarantor. Otherwise, complete the information below.

Buyer name:		Duns #:
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Postal code:
Country:		

End-user. The end-user is the foreign entity that uses the U.S. goods and services. Check if end-user is also the • *borrower or • *guarantor or • *buyer. Otherwise, complete the information below.

End-user name:		Duns #:
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Postal code:
Country:		

Lender. The lender is the company that extends the Ex-Im Bank guaranteed or insured loan to the Borrower. Check if the lender is the • *applicant. Otherwise, complete the information below.

Lender name:	Duns #:	MGA#
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Nine digit zip code:
Country:		

EIB-03-02
Revised 1/2005

OMB 3048-0014
Expires 1/31/2005

3. DETAILS OF COVERAGE REQUESTED

A.. Special Features Requested

Check the boxes for the coverage that apply to the transaction. View the fact sheets describing the coverage on Ex-Im Bank's web site as noted below. Complete and attach the requested forms.

☐ Large Aircraft *Attachment A required*	☐ Project Finance *Attachment F required*	☐ Structured Finance *Attachment G required*
☐ Foreign Currency Guarantee (specify currency) _____ **http://www.exim.gov/products/guarantee/foreign_curr.html**	☐ Local Cost Support **http://www.exim.gov/proucts/policies/local_cost.html**	☐ Co-Financing with Foreign Export Credit Agency *Attachment H required* **http://www.exim.gov/pub/txt/95-10aph.doc**
☐ Used Equipment *Attachment E required* **http://www.exim.gov/products/policies/used_equip.html**	☐ Nuclear **http://www.exim.gov/products/policies/nuclear/.html** Nuclear-screening document must be submitted with application	☐ Environmental Exports Program **http://www.exim.gov/products/special/environment.html**
☐ Ancillary Service Fees **http://www.exim.gov/products/ebd-m-13.html**	☐ 4-month interest rate hold (Direct loans only)	☐ Captialization of Interest During Construction
☐ Tied Aid Program *Attachment C required*	☐ Finance Lease Structure **http://www.exim.gov/products/insurance/leasing.html**	☐ Military/Security/Police **http://www.exim.gov/products/policies/military.html**
☐ Engineering Multiplier Program **http://www.exim.gov/ebd-m-13.html**	☐ Other _____	☐ Other _____

4. TRANSACTION DESCRIPTION

a) Describe Goods and Services. Include make, model, manufacturer/supplier, SIC codes or NAICS (if known) of goods and services, number of units, values, and estimated U.S. and foreign content. This section doesn not need to be completed if the exporter attached a Content Report.

b) Describe the purpose of the transaction. Include answers to the following: Will the goods be used to create or expand production capacity for an exportable product? Are the goods and services destined for an identifiable project? If so, provide information on the total estimated project cost in US dollars. Also provide information as to other sources of financing for the project, including working capital.

EIB-03-02
Revised 1/2005

OMB 3048-0014
Expires 1/31/2005

c) Indicate whether an application for support of this export contract or a related project has been filed with the Agency for International Development, Maritime Administration, Overseas Private Investment Corporation, Trade Development Agency or a multilateral financing agency. If so, include a brief description of the additional support.

5. REQUESTED FINANCING AMOUNTS AND STRUCTURE

Ex-Im Bank support is based on the value of the eligible goods and services in the exporter's supply contract(s) or purchase order(s). The total level of support will be the lesser of: 85% of the value of all eligible goods and services; or 100% of the U.S. content included in all eligible goods and services in the exporter's supply contracts. In addition, Ex-Im Bank may also finance certain local costs, ancillary services as approved, and the exposure fee/premium. Fill out the chart below to determine estimated eligible amounts.

		Definition	US$
A	Supply Contracts or Purchase Orders	The aggregate price of all goods and services in all the supply contract(s) or purchase order(s), including local costs, ancillary services, and excluded goods and services. Break out ancillary services in Aii.	Ai Aii
B	Excluded Goods and Services	The aggregate price of all goods and services that are not eligible for or are excluded from Ex-Im Bank support (e.g. goods not shipped from the U.S. and excluded ancillary services). Local costs should not be included in this line.	
C	Total Local Costs	The aggregate price of all goods manufactured in the end-user's country and all services provided by residents of the purchaser's country. Ex-Im Bank may be able to finance these amounts up to 15% of D below.	
D	Net Contract Price	A minus B minus C	
E	Eligible Foreign content	The aggregate cost of any goods produced or manufactured outside the U.S, or services provided by third country personnel or foreign freight costs and foreign insurance included in the net contract price (line D), (e.g. foreign items shipped from the US)	
F	U.S. Content	D minus E	
G	Cash Payment	This amount must be the greater of E or 15% of D	
H	Local Cost Financing Requested	This can be no more than 15% of D	
I	**Financed Amount Requested** (Excluding Exposure Fee)	D minus G plus H	

OMB 3048-0014
Expires 1/31/2005

A. Exposure Fee . Check one box.

- • Ex-Im Bank to finance the fee, which will be paid as the credit is drawn down.
- • Ex-Im Bank to finance the fee, which will be paid up front.
- • Ex-Im Bank will not finance the fee, and it will be paid as the credit is drawn down.
- • Ex-Im Bank will not finance the fee, and it will be paid up front.

B. Transaction Structure.

i. Principal Repayment Term. _____(years). Unless otherwise requested, equal installments of principal will be repaid semi-annually beginning six months after the starting point.

ii Starting Point. The starting point is generally the event that marks the fulfillment of the exporter's contractual responsibility. See Ex-Im Bank's fact sheets on starting points and reach-back policies at **www.exim.gov**. (Check one box.)

- • Shipment (single shipment)
- • Final Shipment (multiple shipments)
- • Mean Shipment (multiple shipments)
- • Other
- • Services Completion.
- • Completion of Installation. Specify date: _____
- • Project Completion. Specify date: _____

iii Shipment Period. Shipments will be completed and/or services will be performed from: [ ] (month/year) to [ ] (month/year) excluding any acceptance, retention, or warranty period.

iv. Interest rate.
The interest rate to be charged on the guaranteed loan is: _____

6. REASON FOR REQUESTING EX-IM BANK SUPPORT.

Ex-Im Bank will finance the export of U.S. goods and services if it can be demonstrated that Ex-Im Bank support is necessary for the transaction to proceed. Check one of the boxes below describing why support is necessary.

- • The exporter is aware that foreign companies are competing, or are expected to compete for the sale. Provide company name, country, and (if known/applicable) the supporting export credit agency.

_____

_____

_____

- • The exporter is aware that foreign companies manufacture comparable goods and services that are sold in the buyer's market with export credit agency support available. Provide company name, country, and (if known/applicable) the supporting export credit agency.

_____

_____

OMB 3048-0014
Expires 1/31/2005

- • There is limited availability of private financing (from either external or domestic sources). Indicate how financing is constrained by checking the appropriate box.
  - • No availability of economically viable interest rates on terms over one to two years.
  - • Financial institution lending capacity limits reached for either borrower and/or country.
  - • Other (please describe) _____

7. CREDIT INFORMATION

The credit information outlined in the following is attached.

- • Large Aircraft (*Attachment A)*
- • Long-Term and Structured Transactions (*Attachment G)*
- • Limited Recourse Project Finance (*Attachment F)*

8. OTHER INFORMATION AND CERTIFICATIONS

A. General Information - Provide the following:

- •Credit Agency report(s) on the exporter(s). If exporter has a credit rating of BBB or better, this is not required.
- •Annex A to the Master Guarantee Agreement (Guarantees only) at **http://www.exim.gov/pub/pdf/mt-anx-exec.pdf**
- •Lender's mandate letter (required when applicant is a financial institution).
- •Environmental Screening (attachment B).

B. Supply Contracts Between the Exporter and Buyer.

- •Sales contract(s), pro forma invoice(s), or purchase order(s) are attached.
- •No contract is attached. (Project Finance and Preliminary Commitments only)

C. Commitment Fee Agreement.

A commitment fee accrues starting 60 days after the authorization of a final commitment and is payable semiannually in arrears on a schedule determined at the time of authorization. The commitment fee is 1/8 of 1% per annum on the un-disbursed and un-cancelled balance of a guaranteed loan or 1/2 of 1% per annum for a direct loan. Choose one of the options below regarding the payment of the commitment fee:

- • The applicant is the borrower, and by signing the application, is irrevocably committing to pay the commitment fee.
- •The applicant is the guaranteed lender, and is (check one):
  - • signing the application which irrevocably commits it to pay the fee, or
  - • signing the application and enclosing with it an Ex-Im Bank standard form fee letter from the borrower (at **http://www.exim.gov/pub/pdf/mt-anx-exec.pdf**). This letter irrevocably commits the borrower to pay the fee.
- •The applicant is the exporter, and is signing the application and enclosing with it an Ex-Im Bank standard form fee letter from the • borrower or • guaranteed lender (at **http://www.exim.gov/pub/pdf/mt-anx exec.pdf**). This letter irrevocably commits the borrower or guaranteed lender to pay the fee.

D. Content Report

Ex-Im Bank does not require the Content Report at the time of application. Processing of, and the decision on, the application will not be delayed or affected by the submission or absence of the report. A Cause Report EBD-M-55 is requested at the end of each calendar year to describe the nature and reason for the inclusion of any good and services with 50% or more foreign content in the good or service.

OMB 3048-0014
Expires 1/31/2005

E. Anti-Lobbying Disclosure form

Please refer to the Anti-Lobbying Declaration/Disclosure forms (at **http://www.exim.gov/pub/pdf/95-10apd.pdf**) and include a signed copy of the appropriate form(s) with your application.

F. Certifications

The undersigned certifies that the facts stated and the representations made in this application and any attachments to this application are true, to the best of the applicant's knowledge and belief after due diligence, that the applicant has not omitted any material facts. The undersigned certifies that neither it, nor its principals, have with in the past three years been a) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a covered transaction, b) formally proposed for debarment, with a final determination still pending, (c) indicted, convicted or had a civil judgment rendered against it for any of the offenses listed in the Regulations, (d) delinquent on any substantial debts owed to the U.S. Government or its agencies or instrumentalities as of the date of execution of this application; or (e) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Covered Transaction despite an inability to make certifications a) through d) in this paragraph. We further certify that we have not and will not knowingly enter into any agreements in connection with the Goods and Services with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Covered Transaction. All capitalized terms not defined herein shall have the meanings set forth in the Government-wide Non-procurement Suspension and Debarment Regulations - Common Rule (Regulations).

In addition, we further certify that we have not, and will not, engage in any activity in connection with this transaction that is a violation of a) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), b) the Arms Export Control Act, 22 U.S.C. 2751 et seq., c) the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., or d) the Export Administration Act of 1979, 50 U.S.C. 2401 et seq.; nor have we been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of our knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

The applicant certifies that the representations made and the facts stated in this application and its attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.).

8. NOTICES

The applicant is hereby notified that information requested by this application is done so under authority of theExport-Import Bank Act of 1945, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to proThe information provided will be held confidential subject to the Freedom of Information Act (5 USC 552) the Privacy Act of 1974 (5 USC 552a), and the Right to Financial Privacy Act of 1978 (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for a loan or loan guarantee, or concerning a previously approved loan or loan guarantee, to another Government authority as necessary to process, service or foreclose on a loan or loan guarantee, or collect on a defaulted loan or loan guarantee.

Applicant (company) name:

Name and title of authorized officer:

Signature of authorized officer:

Date:

LONG-TERM LOAN OR GUARANTEE APPLICATION
ATTACHMENT A: Large Aircraft Transactions

OMB No. 3048-0013
Expires 1/3/2005

1. **Financing Type Requested.** Three financing options are available for new large aircraft transactions under the Large Aircraft Sector Understanding (LASU), contained in the OECD Arrangement. All three options may be requested for a PC. Only one option may be chosen for an AP. Check below the option(s) you are requesting. For *used* large aircraft transactions, complete No. 3 of the *Long-Term Loan or Guarantee Application.*

   • • **Option 1:** An Ex-Im Bank guarantee for up to 85% of the contract price.

   • • **Option 2:** An Ex-Im Bank guarantee for 42.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 42.5% of the contract price. The Ex-Im Bank direct loan is repaid during the later maturities.

   • • **Option 3:** An Ex-Im Bank guarantee for 22.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 62.5% of the contract price. The Ex-Im Bank guaranteed loan and direct loan are repaid on a pari-passu basis.

2. **Spare Parts Financing.** Indicate if any spare parts or spare engines are included in the export sale and provide the requested information on these items.

3. **Credit Information.** The information requested in this section is generally required for all applications. If the transaction is secured with a sovereign guarantee, all or part of the detailed operational information requested in items E, F, and G below may not be necessary. Likewise, if the airline is a repeat customer of Ex-Im Bank, much of the historical financial and operating information may already have been provided to Ex-Im Bank, and additional information could be limited to updating the existing information. In either situation, please contact the Transportation Division to discuss the possibility of limiting the amount of information required by Ex-Im Bank. If any of the information listed in this section is not obtainable, Ex-Im Bank can discuss other options for credit analysis with the applicant

   a. Airline history and ownership, and background data on senior management/directors.

   b. Contract price of aircraft, net of all credit memoranda and other discounts extended by the suppliers of the airframe, engines, and other components.

   c. Amount of buyer furnished equipment (BFE) included in the contract price, description of BFE, and location where BFE will be installed

   d. Reason for purchase (replacement or expansion of fleet), proposed routes, and suitability of aircraft model in terms of fleet make-up and intended routes.

   e. Description of each business segment of airline operations (passenger, freight, maintenance, catering, and other related businesses). and the portion of revenue and operating profit attributable to each segment.

   f. Identification of major geographic markets and description of competitive position, market share, and strategy regarding competition, yield management, and cost control in each market. Include the airline's marketing plan and details of affiliations and partnerships with other carriers.

   g. The operating statistics listed below or similar statistics containing the same general information for the most recent three years and, if available, up to five years. Provide the listed statistics for domestic and international operations, as well as for each geographic region or route type and each business segment.

ASKs (Available Seat Kilometers)	Load Factors
ATKs (Available Ton Kilometers)	Yield (passenger and cargo)
RPKs (Revenue Passenger Kilometers)	Aircraft Utilization Rate
RTKs (Revenue Ton Kilometers)	Number of Employees
Operating Expenses per Available Seat Kilometers	

   h. Present and projected route structure, including basis for selecting new or expanded routes.

   i. Audited balance sheet, income, and cash flow statements and annual reports for the three most recent fiscal years, and interim statements for the most recent period, if applicable. Annual statements must be prepared in accordance with internationally accepted accounting principles and audited in accordance with international standards.

   j. Projected balance sheet, income, and cash flow statements for a five-year period, accompanied by supporting assumptions.

   k Moody's or Standard & Poors ratings, if available

LONG-TERM LOAN OR GUARANTEE APPLICATION
ATTACHMENT A: Large Aircraft Transactions

OMB No. 3048-0013
Expires 1/3/2005

l. Lender's detailed term sheet of proposed financing structure (*not required for Preliminary Commitments*). Include relevant information on the special purpose vehicle (SPV) for lease structures, including the domicile and proposed ownership of the SPV. If a tax lease structure is contemplated, include a description and flow chart of the proposed tax lease structure.

4. **Security Requirements.** Ex-Im Bank will determine whether the security for a specific large aircraft transaction will be a sovereign guarantee, a lien on the aircraft, or both. For large aircraft transactions in which the security includes the aircraft, Ex-Im Bank will require that a valid and enforceable lien be placed on the aircraft to be financed. The information listed below concerning registration and mortgages is required if Ex-Im Bank has no prior experience with asset-based structures in the airline's country or if the laws pertaining to registration and mortgages have been amended. Please contact the Transportation Division to determine if such experience exists. Supplemental information on these issues may be required during the processing of the application and Ex-Im Bank may ask the applicant to pay for outside counsel or consultants selected by Ex-Im Bank to research particular issues. Include with the application any additional information that may facilitate Ex-Im Bank's determination of security.

a. **Aircraft Registration**

- Is the country of registration a party to the Chicago Convention of 1944 on International Civil Aviation?
- Are there statutes or regulations in the country dealing with the registration of aircraft? If so, provide an English translation of such statutes or regulations.
- Is there an aircraft registry? If so, describe how it operates.
- What specific steps (including any provisions that must be contained in the relevant documents) must be taken to register and deregister an aircraft?

b. **Aircraft Mortgages**

- Is the country of registration a party to the Convention of 1948 on International Recognition of Rights in Aircraft (the "Geneva Convention")?
- Describe the statutes or regulations in the country dealing with mortgages of aircraft.
- Can a valid and perfected first priority mortgage on the aircraft and engines be created for the benefit of Ex-Im Bank?
- What claims may have a "super" priority over a mortgagee or lessor of an aircraft?
- Following a default, can an aircraft be repossessed without judicial interference?
- Can a judgment be awarded in U.S. dollars and, if so, are any special approvals necessary?
- Will a foreign judgment or a judgment by an arbitrator be recognized in the airline's country?

If you have questions about this attachment, please contact the Transportation Division (Telephone: 202-565-3550 or Fax: 202-565-3558).

OMB No. 3048-0013
Expires 1/31/2005

LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT B: Environmental Screening Document

Must Accompany All Applications For Long-Term Financial Support

The information provided on this form is used to environmentally categorize the application and thereby determine the information needed (if any) for Ex-Im Bank to evaluate the environmental effects of the transaction, a process that is crucial to the appropriate and timely review of your application. Please check the boxes that apply.

Are the products or services covered in your application destined for an identified project?

☐ No, explain _____

☐ Yes, a) identify the project _____

b) provide a brief description, including output, capacity, size, etc. _____

_____

_____

_____

c) indicate whether new project, rehabilitation or expansion _____

Project Location

Is the project located in or near an environmentally sensitive site or area? (Check all applicable):

☐ Tropical Forest
☐ Nationally Designated Wetlands or Seashore / Protected Wildlands / Nationally Designated Refuges
☐ National Parks
☐ Coral Reefs or Mangrove Swamps
☐ Habitat of Endangered Species
☐ Location affecting indigenous or tribal populations
☐ Location having Historical / Archaeological Significance
☐ Large Scale Resettlement? (Potential Number of People Affected: _____)
☐ Properties on the World Heritage List

Project Sector Or Industry

Check classification(s) describing the project for which the exports are destined:

☐ Large infrastrucure:
- ☐ Airport
- ☐ Ports/harbors
- ☐ Pipelines
- ☐ Highways
- ☐ Other large infrastructure

☐ Agro-industries – large scale
☐ Forestry
☐ Mining & Mineral Processing Plant
☐ Oil & gas field development
☐ Hydropower Plant / Water Reservoir
☐ Thermal power plant
- ☐ over 140 MWe
- ☐ under 140 MWe••

☐ Nuclear power plant
☐ Geothermal Power

☐ Waste management

☐ Iron & Steel Plant
☐ Smelter
☐ Pulp & Paper Plant
☐ Petroleum Refinery or Petrochemical Plant
☐ Chemical / Pharmaceutical
☐ Natural Gas Liquefaction Plants
☐ Industrial plants – large scale

☐ Transportation (Aircraft, Locomotives, Boats)
☐ Telecommunications or Satellites

☐ Air traffic control or navigational aids
☐ Railway signaling••

☐ Hospitals and medical equipment

☐ Pre-project services, feasibility/environmental study••
☐ Consulting services

☐ Other, specify: _____

Name of Applicant _____ **Date** _____

For inquiries and information please contact the Engineering & Environment Division at (202)565-3570.

Revised 1/05

OMB No. 3048-0013
Expires 1/31/2005

LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT C: Tied Aid Capital Projects Fund

1. Check if you are requesting appropriate Ex-Im Bank support to preclude or counter foreign tied aid offers.

2. Check if one or more foreign governments are offering, or planning to offer, unusually long repayment periods, unusually low interest rates, and/or mixed grant-credit financing for ***the specific contract for which Ex-Im Bank support is sought.*** Attach available documen-tary evidence of a foreign tied aid credit offer. If such evidence is not available, specify your reasons for suspecting foreign tied aid.

3. Check if you authorize Ex-Im Bank to ask the OECD Secretariat to issue a confidential "no aid" comm. on line request to OECD member governments. Acceptance of this request would preclude future foreign and U.S. aid financing for the project.

4. Check if you believe that loss of this contract will jeopardize follow-on sales opportunities for similar sales in the same market. Provide the type and estimated value of potential follow-on sales.

5. Provide the following information, if known, for each foreign government's tied aid offers.

	Foreign Offer #1	Foreign Offer #2
Donor government		
Foreign exporters supported		
Total offer amount		
Currency of offer		
Credit portion amount		
Credit portion interest rate		
Credit portion grace period		
Credit portion repayment period		
Grant portion, if any		

If you have questions about this attachment, please contact the Business Development Division (Telephone: 202-565-3946 or Fax: 202-565-3931).

OMB No. 3048-0013
Expires 1/31/2005

Long-Term Loan or Guarantee Application

ATTACHMENT D: Anti-lobbying Declaration/Disclosure

This attachment applies only to applications for final commitments.

1. **Anti-Lobbying Law.**

Under a U.S. law (31 U.S.C. 1352), recipients of U.S. government loans, grants, contracts, and cooperative agreements are prohibited from spending Federally appropriated funds to influence certain U.S. government employees, including Ex-Im Bank employees, in connection with the awarding of those Federal awards.

Recipients of Federal loans, grants, guarantees, insurance, contracts and cooperative agreements may spend non-Federally appropriated funds for such lobbying purposes; however, they are required to report such lobbying expenditures.

The law applies to Ex-Im Bank loan, guarantee and insurance transactions. Declaration and Disclosure Forms are to be filed by applicants and recipients and certain exporters and suppliers, as defined below.

2. **Compliance Procedures. 2a. Who Must File.**

All applicants for final commitments from Ex-Im Bank must file a Declaration regardless of whether non-Federally appropriated funds have been spent for lobbying purposes. If non-Federally appropriated funds have been spent, a Disclosure Form must also be filed. Applicants include borrowers and lenders who are applicants for final commitments for medium-term and long-term direct loans and guarantees.

The Declaration and/or Disclosure Forms must be received by Ex-Im Bank from the applicant before Ex-Im Bank will consider the application for a final commitment.

All recipients under Ex-Im Bank programs, who are not the applicant for a final commitment, must file a Declaration and, if they have spent funds for lobbying purposes, a Disclosure Form. Recipients include borrowers who receive Ex-Im Bank direct loans and lenders who receive Ex-Im Bank guarantees.

The Declaration and/or Disclosure Forms must be received by Ex-Im Bank from the recipients before Ex-Im Bank will enter into a loan or guarantee agreement.

All suppliers who have entered into a contract in excess of $100,000 with the recipient of an Ex-Im Bank direct loan or grant must file a Declaration and, if funds have be en spent for lobbying purpose s, a Disclosure Form.

Such suppliers must file the Declaration and/or Disclosure Forms upon being awarded the supply contract.

2b. Exemptions.

The law has been interpreted so that it does not apply to foreign governments, their instrumentalities or their wholly-owned companies. Therefore, these entities are exempt from filing both the Declaration and Disclosure Forms.

The law's disclosure requirements do not apply to loan or guarantee transactions where the U.S. Government-financed portion is $150,000 or less.

2c. How To File.

Complete the appropriate Declaration Form on the following page. If you are required to file a Disclosure Form, it will be provided by Ex-Im Bank upon request. Any person who fails to file the required forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

OMB No. 3048-0013
Expires 1/31/2005

Long-Term Loan or Guarantee Application

ATTACHMENT D: Anti-lobbying Declaration/Disclosure

3. Certification for Contracts, Grants, Loans and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was mad e or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Cod e. Any person w ho fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Applicant/Recipient Company
Signature
Name Title

OMB No. 3048-0013
Expires 1/31/2005

Long-Term Loan or Guarantee Application

ATTACHMENT D: Anti-lobbying De claration/Disclosure

4. Statement for Loan Guarantees and Loan Insurance.

The undersigned certifies, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be pa id to an y person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of a Congress in connection with this commitment providing for the Unit ed States t o insure o r guarantee a loan, the undersigned shall complete an d submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Applicant/Recipient Company

Signature

Name Title

OMB No. 3048-0013
EXPIRES 1/31/2005

LONG-TERM LOAN OR GUARANTEE APPLICATION
ATTACHMENT E: USED EQUIPMENT

Equipment that has been previously owned or placed into service is generally eligible for support under Ex-Im Bank's loan, guarantee and insurance programs, provided certain criteria are met. To be eligible for Ex-Im Bank support, used equipment, including equipment that has been refurbished in the U.S., must meet the following **eligibility criteria:**

1. To be considered U.S. content, the used equipment must be of original U.S. manufacture, AND, if previously exported, must have been in use in the U.S. for at least one year prior to export.

2. The U.S. costs associated with the refurbishment of the equipment are eligible for Ex-Im Bank support, provided they meet Ex-Im Bank's foreign content policy parameters. Ex-Im Bank can support the lesser of 85 percent of the U.S. Contract Price of the item or 100% of the actual U.S. content of the item provided that (a) the item is shipped from the U.S. and (b) the foreign content of the item does not exceed 50 percent of the item's total production cost.

3. If the used equipment is of either original foreign manufacture or original U.S. manufacture, previously exported and has **not been in use in the U.S. for at least one year prior** to its proposed export, then Ex-Im Bank will treat it as **foreign content** and the following applies:

a. if the equipment is to be refurbished, the used equipment procurement cost is considered eligible foreign content provided that this cost is less than 50 percent of the total procurement and refurbishment cost.

b. if the foreign content of the used equipment exceeds 50 percent of the cost associated with the procurement and refurbishment of the equipment, then only the U.S. refurbishment portion will be considered eligible for Ex-Im Bank support.

4. Previously exported goods that benefitted from Ex-Im Bank financing in the past will be considered eligible for Ex-Im Bank support provided that the original financing has been **paid in full and** that the equipment has been **in use in the U.S. for at least one year**.

5. The **repayment term** that Ex-Im Bank offers for used and refurbished equipment will be consistent with Ex-Im Bank's international agreements for repayment terms based on contract value. Ex-Im Bank, at its sole discretion, will determine the remaining useful life of such equipment.

a. If the remaining **useful life** of the equipment is **at least half** the useful life of equivalent **new equipment**, then Ex-Im Bank may support a repayment term equal to that offered new equipment.

b. If the remaining **useful life** of the equipment is **less than half** the useful life of equivalent **new equipment**, then Ex-Im Bank may support a repayment term **equal to the useful life** remaining.

c. If the sale **includes** items some of which may have a **useful life of at least half** that of equivalent new equipment and **some** of which may have a **useful life of less than half** that of equivalent new equipment, a **weighted average** of the useful lives of all the items will be calculated to determine the payment term of the entire sale.

OMB No 3048-0013
EXPIRES 1/31/2005

LONG-TERM LOAN OR GUARANTEE APPLICATION
ATTACHMENT E: USED EQUIPMENT

Used Equipment Questionnaire

Applicant: _____
Buyer: _____
Policy number (*for insurance program*): _____.

Complete a separate questionnaire for each item of used equipment.

1. Product information

Name and description of used equipment: _____
Equipment History
a) year manufactured: _____ b) hour meter reading: _____
c) mileage: _____ d) where is equipment located: _____
e) how long has the equipment been there?: _____
Is the product under warranty? ☐ Yes ☐ No
Term: _____ Description: _____
Has the equipment been rebuilt/reconditioned? ☐ Yes ☐ No
By whom? _____ Location: _____ Date: _____
Does this equipment have an independent mechanical certification, evaluation, or assessment? ☐ Yes ☐ No

2. Export/Import History

Was the equipment previously exported? ☐ Yes ☐ No
Did Ex-Im Bank provide support? ☐ Yes ☐ No If yes, details: _____

Was the equipment imported to the U.S. ? ☐ Yes ☐ No

3. Prices and Costs

Contract price: $_____ Foreign content included in the contract price: $_____
U.S. supplier's purchase price: $_____ Purchase Date: _____
Cost of rebuilding/reconditioning: $_____ Cost of spare parts included: $_____
Description of rebuilding and/or spare parts: _____

4. Used Aircraft Only.

Have all airworthiness directives been completed? ☐ Yes ☐ No
If no, describe the regulation or directive permits required for continued operation of the aircraft: _____
_____
Number of cycle hours remaining on the airframe and engines: _____
Months remaining before next maintenance "C" and "D" checks: _____
Names of each previous owner and lessee with the corresponding acquisition dates: _____

Signature: _____ Date: _____
Name: _____ Title: _____

If you have any questions, please call Ex-Im Bank's Engineering Division on 202.565.3570 or Business Development Group on 202.565.3946

PRELIMINARY/FINAL COMMITMENT APPLICATION
ATTACHMENT F: Project and Structured Finance

QMB No. 3048-0013
Expires 1/31/2005

I. Project Finance.

The term "project finance" refers to the financing of projects that are dependent on the project cash flows for repayment as defined by the contractual relationships within each project. These projects do not rely on the typical export credit agency security package which has recourse to a foreign government, financial institution or established corporation to meet a reasonable assurance of repayment criterion. By their very nature, projects rely for successful completion on a large number of integrated contractual arrangements.

1. Ex-Im Bank Project Finance.

- **Maximum Support Possible.** Where appropriate, Ex-Im Bank will offer the maximum support allowed within the rules of the OECD Arrangement, to include:
  - *a) Financing of interest accrued during construction related to the Ex-Im Bank financing.*
  - *b) Allowance of up to 15% foreign content in the U.S. package.*
  - *c) Maximum repayment term allowed under the OECD guidelines.*
- **No Size Limitation.** There are no minimum or maximum size limitations.
- **Flexible Coverage.** Any combination of either direct loans or guarantees for commercial bank loans with political risk only or comprehensive coverage are available for a given project.
- **Flexible Equity Arrangements.** There are no predetermined equity requirements. Ex-Im Bank will review and determine the appropriate equity structure on a case-by-case basis. The equity sponsor's ownership position cannot be transferred without Ex-Im Bank's consent.
- **Ex-Im Bank Exposure Fee Commensurate with Risk.** Exposure fees will vary depending on the risk assessment of the project and the type of coverage requested during construction and post completion. The exposure fee can be paid up-front or with each disbursement and can be financed.
- **Environmental Considerations.** Ex-Im Bank's environmental procedures will apply.
- **Rapid Case Processing.** With the help of outside financial consultants, Ex-Im Bank will give a preliminary indication of support, called a Preliminary Project Letter (PPL), within 45 days from the date evaluation begins by the outside consultant. Should the project be sufficiently developed, the sponsor may proceed directly to a final commitment from the PPL, as determined by the Project and Structured Finance Division.
- **Financial Consultants.** Ex-Im Bank has advisers on specific project finance cases.

2. Application Process.

- **Submission.** The project finance application must include: 1) the standard *Ex-Im Bank Preliminary Commitment/Final Commitment Application*, and 2) the materials listed in this attachment. These materials should be marked "Project Finance Application" and submitted to Ex-Im Bank.
- **Preliminary Review.** Ex-Im Bank will review the submitted material within five to ten business days of the date that the application is received by the Division. This review will determine if the application includes the information required to proceed with an evaluation.
- **Incomplete Applications.** If the application presented is determined to be incomplete by the Project and Structured Finance Division, the applicant will be contacted with an explanation of the application's deficiencies. If the application is not determined to be suitable for limited recourse project financing but could still be considered for another form of Ex-Im Bank financing, it will be forwarded to the appropriate division and the applicant will be notified.
- **Choice of Financial Consultant.** A financial consultant will be selected by Ex-Im Bank to evaluate the application. Determination of the specific financial consultant will depend on several factors including geographic and sector expertise, and ability to meet project deadlines.
- **Evaluation Fee.** Before the financial consultant begins review, the applicant will be required to pay an evaluation fee.
- **Other Fees.** For most projects, Ex-Im Bank will require, either in conjunction with other lenders or for its own use, the advice of independent outside legal counsel, independent engineers, and insurance advisers. In addition, there may be other fees associated with conducting proper due diligence. Payment for these and any other fees will be the responsibility of the project sponsors or the applicant.
- **Preliminary Project Letter.** Assuming the evaluation process is satisfactory, the Project and Structured Finance Division will issue a PPL. The PPL indicates that Ex-Im Bank is prepared to move forward on a financing offer and the corresponding general terms and conditions. These terms and conditions will be based upon the information available at the time of application. The evaluation and issuance of the PPL will be completed within 45 days of commencement of the evaluation.
- **Evaluation Post-PPL.** After issuance of the PPL, Ex-Im Bank will work with the applicant to secure a final commitment. On a case-by-case basis, Ex-Im Bank may continue to utilize the financial consultant.

PRELIMINARY/FINAL COMMITMENT APPLICATION
ATTACHMENT F: Project and Structured Finance

OMB No. 3048-0013
Expires 1/31/2005

3. Project Criteria and Application Information Requirements.

a. General Project. (5 copies)

Definition

- Ideally the project should have long-term con-tracts from creditworthy entities for the purchase of the project's output and the purchase of the project's major inputs such as fuel, raw materials, and operations and maintenance. Such contracts should extend beyond the term of the requested Ex-Im Bank financing. Where such contracts do not exist, additional equity and/or other credit support is expected.
- The project should contain an appropriate allocation of risk to the parties best suited to manage those risks. Sensitivity analysis should result in a sufficient debt service coverage ratio to ensure uninterrupted debt servicing for the term of the debt.
- Total project cost should be comparable to projects of similar type and size for a particular market.
- Product unit pricing and costs should reflect market-based pricing.
- Devaluation risk needs to be substantially mitigated through revenues denominated in hard currencies, revenue adjustment formulas based on changing currency relationships, or other structural mechanisms.

Information required

1. Summary of all aspects of the project, as contained in an independently prepared feasibility study and/or a detailed information memorandum, prepared by a qualified party. The study or memorandum should include the project description, location, legal status, ownership, and the background and status of key elements of the project structure, such as agreements, licenses, local partner participation, and financing.
2. Draft agreements for key elements of the project, including supply and offtake agreements.
3. A breakdown of anticipated project costs through commissioning, including interest during construction and working capital requirements, by major cost category and country of origin.
4. A summary of the anticipated project financing plan and security package, including: the proposed source, amount, currency and terms of the debt and equity investments; the sources of finance in the event of project cost overruns; and a description of escrow accounts. Information on the terms, security requirements, and status of financing commitments of other lenders to the project, if applicable, should be provided.
5. Projected annual financial statements covering the period from project development through final maturity of the proposed Ex-Im Bank financing, to include balance sheet, profit and loss, source and application of funds statements, and debt service ratios. Projections should include a sensitivity analysis for not only the expected scenario but pessimistic and optimistic cases as well. The above information must be provided electronically in a user friendly financial model. Ex-Im Bank must be able to review and adjust the assumptions in the model.
6. Assumptions for the financial projections, including but not limited to the basis for sales volume and prices; operating and administrative costs; depreciation, amortization and tax rates; and local government policy on price regulation.
7. Market information to include: ten years of historical price and volume data; present and projected capacity of industry; product demand forecast with assumptions; description of competition and projected market share of the project as compared to the shares of the competition; identity and location of customers; and marketing and distribution strategy.
8. A description of the principal risks and benefits of the project to the sponsors, lenders, and host government.
9. A description of the types of insurance coverage to be purchased for both the pre- and post-completion phases of the project.

b. Participants. (5 Copies)

Definition

- Project sponsors, offtake purchasers, contractors, operators, and suppliers must be able to demonstrate the technical, managerial and financial capabilities to perform their respective obligations within the project.

Information Required

1. Sponsors must provide a brief history and description of their operations, a description of their relevant experience in similar projects, and three years of audited financial statements, in English.
2. If the sponsors are part of a joint venture or consortium, information on all participants should be provided. A shareholders' agreement should also be provided.
3. Offtake purchasers and suppliers should provide a history and description of operations, at least three years of audited financial statements, in English, and a description of how the project fits in to their long-term strategic plan.
4. Contractors and operators must provide resumes of experience with similar projects and recent historical financial information.

OMB No 3048-0013
Expires 11/30/2004

PRELIMINARY/FINAL COMMITMENT APPLICATION
ATTACHMENT F: Project and Structured Finance

c. Technical. (3 Copies)

Definition

- Project technology must be proven and reliable, and licensing arrangements must be contractually secured for a period extending beyond the term of the Ex-Im Bank financing.
- A technical feasibility study or sufficiently detailed engineering information needs to be provided to demonstrate the technical feasibility of the project.

Information Required

1. Technical description and a process flow diagram for each project facility.
2. Detailed estimate of operating costs.
3. Arrangement for supply of raw materials and utilities.
4. Draft turnkey construction contract and description of sources of possible cost increases and delays during construction, including detailed description of liquidated damage provisions and performance bond requirements.
5. Project implementation schedule, showing target dates for achieving essential project milestones.
6. A site-specific environmental assessment, highlighting concerns, requirements and solutions. The information to be provided should demonstrate compliance with Ex-Im Bank's environmental guidelines.

d. Host Country Legal/Regulatory Framework and Government Role. (5 Copies)

Definition

- Host government commitment to proceeding with the project needs to be demonstrated.
- Legal and regulatory analysis needs to demonstrate that the country conditions and the project structure are sufficient to support long-term debt exposure for the project through enforceable contractual relationships.
- Ex-Im Bank's relationship with the host government will be addressed on a case-by-case basis. An Ex-Im Bank Project Incentive Agreement (PIA) with the host government may be required. The PIA addresses certain political risks and Ex-Im Bank's method of resolution of conflict with the host government pertaining to these issues. Only certain markets will require a PIA.

Information Required

1. A description of the host government's role in the project, and progress made toward obtaining essential government commitments, including authorizations from appropriate government entities to proceed with the project.
2. A definition of the control, if any, that the government will have in the management and operation of the project, and status of any assurances that the government will not interfere in the project's operation. If the government is also a project sponsor, these issues will be of particular importance.
3. Evidence of the government's current and historical commitment and policies for availability and convertibility of foreign currency.
4. Status and strategy for obtaining government undertakings to support any government parties involved in the project, to the extent that such undertakings are needed to provide adequate credit support for such entities.

II. Structured Finance.

"Structured" transactions will have an established corporation as a borrower but may rely upon sources of collateral or security in addition to the corporation's balance sheet. The information required for structured finance applications is the same as that requested in "Attachment G' plus any additional data describing the proposed structure and security package.

If you have questions about this attachment, please contact the Project and Structured Finance Division (Telephone: 202-565-3690 or Fax: 202-565-3695).

OMB No. 3048
Expires 1/31/2005

LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT G: Credit Information

This attachment applies to all Long-Term Loan or Guarantee Applications, except for Large Aircraft and Project Finance Transactions. Provide the General Information and Supplemental Financial Information requested below (as applicable) on the borrower and, if any, guarantor. If any items are not available, provide an explanation. Following Ex-Im Bank's initial review of the application, an Ex-Im Bank Credit Officer may request additional credit information.

In the event that the borrower lacks sufficient credit strength in terms of asset size, operating history or cash flows to provide a reasonable assurance of repayment, an Ex-Im Bank Credit Officer will contact you to discuss whether "Structured Finance" credit enhancements are appropriate. Such enhancements may include one or more of the following:

- Special purpose accounts, including offshore payment accounts, escrow or reserve accounts, or other accounts that would be subject to Ex-Im Bank's control.
- Covenants and default provisions such as financial ratio or debt service coverage requirements that would, if violated, prevent payment of dividends to the company owners.
- Insurance requirements that might be more strict than those typically applicable under corporate insurance policies.
- Letters of credit or other sources of funds that would be pledged by the sponsor to Ex-Im Bank through a bank or other third party.

GENERAL INFORMATION

1. **Company description and ownership**. Provide a concise description of company origin, legal status, facilities, business activities (and any major changes during the last three years), and primary market(s). Describe the principal customer base (e.g., manufacturers, wholesalers) and provide the percentage of domestic versus export sales and the amount of sales to each major export market. Provide the name and address of each owner of at least 10% of company shares and his/her ownership percent.

2. **Related party information**. Provide the names and description of subsidiaries, affiliates and commonly owned companies. Indicate which, if any, of these related parties account for more than 25% of the borrower's sales or purchases during the last fiscal year.

3. **References**.

   a. Bank references. Provide a creditor bank reference prepared within six months of the application date. A bank reference is not required for sovereign or political risk transactions. Report should include bank name, address, length of relationship, amount, currency, terms of secured and unsecured credit and repayment experience.

   b. Credit Report: Provide a credit report (such as D and B) prepared within six months of the application date. Not required for sovereign or financial institution transactions.

4. **Financial Statements**. Provide independently audited balance sheets, income statements and cash flow statements, in English, for the last three fiscal years. Include the auditor's notes to the financial statements. If the most recent fiscal year ended more than nine months prior to the application date, provide interim statements. When interim statements are provided, also provide interim statements for the same period of the previous year (for comparative purposes). If there are substantial related party transactions as described in #2, the financial statements must adequately disclose the consolidated financial condition of the borrower/guarantor and the named related parties. Financial statements are not required for sovereign or political risk transactions.

5. **Financial projections**. Provide projected annual income statement, balance sheet and cash flow forecasts for the period of the Ex-Im Bank financing, accompanied by supporting assumptions. Projections are not required if the borrower or guarantor is a financial institution, or for sovereign or political risk transactions.

OMB No. 3048
Expires 1/31/2005

LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT G: Credit Information

6. **Market indications**. Provide debt ratings assigned by Standard and Poor's, Moody's, Fitch-IBCA and Duff & Phelps, as well as other international and local rating agencies. Include the debt rating reports issued by the rating agency, and if applicable, the prospectus for debt or equity offered during the two years prior to the application date.

7. **Credit Agreement Information**. Provide a summary of the covenants, events of default, security interest and inter-creditor arrangements for existing creditors of the borrower or other entity considered to be the primary source of repayment.

SUPPLEMENTAL FINANCIAL INFORMATION

This information is required for comprehensive-cover transactions where the primary source of repayment is not a financial institution or a sovereign entity. Provide the information requested below on the borrower or guarantor that is designated as the primary source of repayment in accordance with the following guidance:

- if the requested information is provided in the notes to the financial statements, refer to the notes and indicate the note number.
- if the requested information is provided in a credit write-up that is enclosed, refer to the write-up and indicate the page number.
- unless otherwise indicated, provide information for each fiscal year for which financial statements are submitted.
- Items regarding changes in amounts or percentages refer to changes measured in U.S. dollars.
- a "change" means any change, either an increase or a decrease.

Operating Performance

1. Describe the expected operational and financial impact of the goods and/or services being purchased.
2. If any customer accounted for more than 25% of sales revenue in the last fiscal year, provide the customer's name, industry, percentage of revenue, length of relationship, sales terms, and whether or not the customer is a related or commonly owned entity.
3. If sales revenue changed by more than 15%, provide reasons.
4. Provide the level of production (in units) for principal product lines for each fiscal year and, if the production level changed by more than 15%, provide reasons.
5. For each component of cost of goods sold for the last fiscal year, provide the component type, amount, origin (domestic or foreign), and range of terms offered by suppliers.
6. If cost of goods sold as a percentage of sales revenue changed by more than 5%, provide reasons.
7. If any non-operating expense (other than interest or income taxes) represented more than 20% of operating profit, describe the expense.
8. If an operating loss or a net loss was incurred, provide reasons.

Balance Sheet

9. If total investments were more than 15% of total assets at the end of the last fiscal year, provide for each investment the type, amount, currency, security issuer, and/or company owned.
10. If there has been a change of more than 20% in receivables days-on-hand, provide the reasons and the range of terms granted for trade receivables.
11. If aggregate related company receivables, commonly owned company receivables, and non-trade related receivables exceeded 15% of total assets, provide the amount and purpose of each category of receivables.
12. If inventory was more than 20% of total assets at the end of the last fiscal year and/or inventory days-on-hand increased more than 20%, provide reasons.
13. If payables days-on-hand increased more than 20%, provide reasons and the terms granted by each supplier that represented more than 20% of payables.
14. If capital expenditures anticipated during the next 2 fiscal years exceed 15% of net fixed assets at the end of the last fiscal year, provide the amount, purpose, and financing plans for the capital expenditures.

OMB No. 3048
Expires 1/31/2005

LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT G: Credit Information

15. Provide the source, amount, currency, terms, and security/guarantees for credit lines available from financial institutions and credits owed to financial institutions.
16. Provide the aggregate amount of principal maturities due to all creditors in each of the next five fiscal years.
17. Provide the source, amount, and dates of equity cash infusions in each of the last three fiscal years and anticipated during the next fiscal year.
18. If any asset, liability, or equity account represented more than 15% of total assets and has not been previously described, provide the amount and a description of the account.

Off Balance Sheet Items

19. If the aggregate amount of contingent/off balance sheet items was more than 10% of total assets at the end of the last fiscal year, provide a description of the items.

Interim Statements

20. Explain any material changes in the interim financial statements relative to the statements for the last fiscal year.

Subsequent Events

21. Provide details of events subsequent to the end of the last fiscal year that could have a material effect on the creditworthiness of the company, and plans to deal with any material adverse changes.

OMB No. 3048-0013
Expires 1/31/2005

LONG TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT H: Co-Financing with Foreign Export Credit Agency

I. Parties:

Identify the name of the co-financing Foreign Export Credit Agency, and if known, the contact person(s), their phone and fax numbers, and e-mail addresses:

_____
_____
_____

Describe any relationships between any of the parties in the transaction except as described in Attachment G, Credit Information or 6.j) of EIB92-48:

_____
_____
_____

II. U.S. Supply Contract/Purchase Order Information in Dollars:

U.S. Content included in Supply Contract(s)	$_____
Eligible Foreign Content included in Supply Contract(s)	$_____
Local Costs (if any) included in Supply Contract(s)	$_____
Ancillary Services (if any)	$_____
Total Export-Import Bank Portion	$_____

III. Non-U.S. Exporter/Supplier Information:

Non-U.S. Exporter(s)/Supplier(s) With Address and Country of Origin	Description of their Goods and Services
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Non-U.S. Supply Contract(s)/Purchase Order(s) Information in Dollars

Foreign ECA Content included in Supply Contract(s)	$_____
Eligible Foreign Content included in Supply Contract(s)	$_____
Local Costs (if any) included in Supply Contract(s)	$_____
Other Services (if any) not included in Supply Contract(s)	$_____
Total Foreign ECA Portion	$_____

LONG TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT H: Co-Financing with Foreign Export Credit Agency

IV. Financed Amount Requested (excluding Exposure Fee):

This chart is to be completed with respect to those Goods and Services included in the Supply Contract(s) for which financing is requested from Ex-Im Bank. See Foreign Content Policy for Medium- and Long-Term Exports: http://www.exim.gov/pub/pdf/ebd-m-04a.pdf

	Ex-Im Bank	Foreign ECA	Total Financed/Insured
1. Content Sourced in the ECA Country	$	$	$
2. Eligible Foreign Content			
3. Ancillary/Other Services (if any)			
4. Less Cash Payment	( )	( )	( )
5. Local Costs (if any)			
Total Financed/Insured Amount Requested (excluding Exposure Fee/Insurance Premium)			

V. Other Information:

Describe any non-ECA financing for the Supply Contract(s):

_____

_____

Certification:

The applicant consents and certifies that it has obtained the consent of the other transaction participants to the disclosure by Ex-Im Bank of any information relating to this transaction to the co-financing Foreign Export Credit Agency, to the extent permitted by applicable law.

Signed _____ Dated _____

Print Name: _____

Title: _____

Firm Name: _____

IB Form 95-10 (attachment H)
Revised 1/05

[FR Doc. 05–2110 Filed 2–2–05; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, January 25, 2005, 10 a.m. meeting closed to the public. This meeting was cancelled.

* * * * *

DATE AND TIME: Tuesday, February 8, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, telephone (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.
[FR Doc. 05–2206 Filed 2–1–05; 2:19 pm]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 17, 2005.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Joel H. Porter, Memphis, Tennessee, and John S. Shepherd, Collierville, Tennessee; John S. Wilder, Mason,Tennessee; James L. Rout, Jr., Memphis, Tennessee; Herbert T. Brooks, Jr., Collierville, Tennessee; R. Todd Vanderpool, Cordova, Tennessee; Randal Lankford, Ripley, Tennessee; Frank Inman, Jr., Memphis, Tennessee; Jimmy A. Lott, Collierville, Tennessee; Raymond E. Smith, Collierville,Tennessee; Herman W. Cox, Collierville, Tennessee; Philip C. Fons, Memphis, Tennessee; Gene Mathis, Memphis, Tennessee; Earl A. Richmond, Carthage, Tennessee; Robert L. Harbin, Rome, Georgia; and Crawford McDonald, Memphis, Tennessee (acting in concert); to acquire voting shares of BankTennessee, Collierville, Tennessee.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Shawn D. Penner, Wichita, Kansas, individually, and as general partner of Shamrock Partners, L.P., Wichita, Kansas; to retain voting shares of Equity Bancshares, Inc., and thereby indirectly retain voting shares of Equity Bank, A National Association, both of Andover, Kansas.

Board of Governors of the Federal Reserve System, January 28, 2005.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 05–2018 Filed 2–2–05; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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 February 28, 2005.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First National Bancorp, Inc., Green Forest, Arkansas; to acquire 9.9 percent of the voting shares of Legacy National Bank, Springdale, Arkansas (in formation).

Board of Governors of the Federal Reserve System, January 28, 2005.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 05–2019 Filed 2–2–05; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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 February 28, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Liberty Capital Corporation Employee Stock Ownership Plan, Hugo, Colorado; to acquire an additional 1.65 percent, for a total of 29.8 percent, of the voting shares of First Liberty Capital Corporation, and thereby indirectly acquire The First National Bank of Hugo, both of Hugo, Colorado.

Board of Governors of the Federal Reserve System, January 31, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2097 Filed 2–2–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

OMB Control No. 3090–0204

General Services Administration Acquisition Regulation;Information Collection; Commercial Delivery ScheduleClause and Notice of Shipment

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding commercial delivery schedule clause and notice of shipment. A request for public comments was published at 69 FR 72196, December 13, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Michael O. Jackson, Procurement Analyst, Contract Policy Division, at telephone (202) 208–4949 or via email at *michaelo.jackson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Commercial Delivery Schedule (Multiple Award Schedule) clause required offerors to provide their commercial delivery terms and conditions. FSS awards contracts to commercial firms under terms and conditions that mirror commercial practices for the supplies and services. In order to ensure the Government obtains the supplies within the offeror's commercial delivery timeframe, the offeror must provide the information requested in the GSAR clause, Commercial Delivery Schedule (Multiple Award Schedule). Such a notice is necessary when preparations need to be made for docking arrangements, storage, trans-shipment of materials handling equipment of supplies and equipment upon delivery, labor and inside delivery at destination.

B. Annual Reporting Burden

Total Responses annually: 10,305
Hours Per Response: .26
Total Burden Hours: 2741
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment, in all correspondence.

Dated: January 28, 2005

Julia Wise

Deputy Director,Contract Policy Division

[FR Doc. 05–2016 Filed 2–2–05; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 05050]

A Cooperative Agreement to Strengthen Collaboration Between the Disciplines of Academic Medicine and Public Health; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to: (1) Strengthen the quality of medical education and training; (2) improve the nation's health by strengthening the collaborations between the disciplines of academic medicine and public health; (3) enhance the search for biomedical knowledge; and (4) integrate education into the provision of effective health care.

B. Eligible Applicant

Assistance will be provided only to the Association of American Medical Colleges (AAMC). AAMC is the appropriate and only qualified organization to address the activities described under this announcement.

AAMC is the only non-profit association that represents all 125 accredited medical schools in the United States and 17 accredited medical schools in Canada. These medical schools are accredited by the Liaison Committee on Medical Education and represent the primary educational system that provides the Nation's physicians with their undergraduate and medical education. In addition, AAMC represents 400 major teaching hospitals, including more than 70 Veterans Affairs medical centers, 96 academic and scientific societies (representing 105,000 faculty constituents), the nation's 66,000 medical students, and 97,000 residents.

C. Funding

Approximately $14,000,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before September 30, 2005, and will be made for a 12-month budget

period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: John (Jack) Rogers, Technical Review Administrator, The Coordinating Center for Health Information and Services (CoChis), 4770 Buford Highway, Mailstop K38, Atlanta, GA 30341, Telephone: 770–488–2516, E-mail: *JJRogers@cdc.gov.*

Dated: January 28, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2042 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 05048]

A Cooperative Agreement to Improve the Interaction Between Public Health Academicians and Public Health Practitioners; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to assist the Association of Schools of Public Health (ASPH) in improving the practice of public health and strengthening the public health system by: (1) Supporting public health programs and education within the nation's accredited schools of public health; (2) supporting information exchange with and among the nation's schools of public health; (3) increasing the interaction between public health academicians and practitioners; and (4) enhancing the preparation and continuing education of public health workers.

B. Eligible Applicant

The Association of Schools of Public Health (ASPH) is uniquely qualified to provide services specified under this cooperative agreement for the following reasons: ASPH is the only national organization representing the deans, faculty, and students of the accredited member schools of public health and other programs seeking accreditation as schools of public health. The 36 member schools are fully accredited by the Council on Education for Public Health (CEPH), and represent the primary educational system that trains personnel to operate the nation's public health agencies and administer disease prevention and health promotion programs. ASPH has the institutional knowledge required to address the needs of both the schools of public health and public health agencies.

As the nation's only representative of accredited schools of public health for over 50 years, and as liaison between the schools, government, other professional bodies, and the public, ASPH is uniquely qualified and positioned to: (a) Strengthen and support schools of public health and (b) bring together the fields of academic public health and practice. It works with various agencies of the federal government on projects aimed at strengthening public health education and research and the public health profession. It assists its member schools in the development and coordination of national health policies, and it serves as an information center for governmental and private groups and individuals whose concerns overlap those of higher education for public health. There is no other organization that provides this level of support to the nation's schools of public health for achievement of their education, service, and research missions.

C. Funding

Approximately $21,000,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before September 1, 2005, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: John J. Rogers, Technical Review Administrator, The Coordinating Center for Health Information and Services (CoChis), 4770 Buford Hwy, Mailstop K38, Atlanta, GA 30341, Telephone: 770–488–2516, E-mail: *JJRogers@cdc.gov.*

Dated: January 28, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2051 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Funding Opportunity Number: CE05–024]

Community-Based Interventions for Alcohol-Impaired Driving; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for a cooperative agreement that seeks to evaluate interventions to decrease alcohol-impaired driving in community settings and the resulting deaths and injuries was published in the **Federal Register** on November 19, 2004, Vol. 69, No. 223, pages 67738–67744.

The notice is amended as follows: On page 67740, Column 2, Section IV.1. , Address to Request application Package, delete the first sentence and replace with "To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004).

Dated: January 28, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2043 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Collaborative Efforts To Prevent Child Sexual Abuse

Announcement Type: New.

Funding Opportunity Number: RFA 05038.

Catalog of Federal Domestic Assistance Number: 93.136.

Dates: Application Deadline: April 4, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) and 394(b) of the Public Health Service Act, [42 U.S.C. 241(a) and 280b–2(b), as amended.

Background: Approximately 900,000 minor children in the United States are identified by child protective services as

victims of maltreatment on an annual basis. Additionally, in 2002, over 88,000 substantiated or indicated cases of child sexual abuse (CSA) were identified by the Administration on Children, Youth and Families. (National Clearinghouse on Child Abuse and Neglect, 2004). Child sexual abuse is associated with negative outcomes in both childhood and adulthood (*e.g.*, anxiety, depression, self-harming behavior, substance abuse, Post Traumatic Stress Disorder, verbal and physical aggression, poor academic achievement, and low self-esteem and high risk sexual behavior). (Oddone Paolucci, Genuis, Violato, 2001; Putnam and Trickett, 1993; Browne and Finkelhor, 1987).

Due to the serious short and long term consequences of CSA, the Centers for Disease Control and Prevention (CDC's) focus for this effort is on primary prevention (*i.e.* preventing CSA from initially occurring). The specific focus of the prevention efforts should be on adult and community responsibility in the prevention of perpetration of child sexual abuse. No single factor explains the perpetration of child sexual abuse; rather it is a complex interplay of individual and contextual factors and influence (*i.e.* individual, relationship, community, and societal) (Krug, *et al*). Thus, prevention programs should address multiple levels of influence including individual, relationship, community, and societal levels as represented by the World Report on Violence and Health (Krug, *et al.* 2002).

For the purposes of this announcement, the following definitions apply:

Child: A person under eighteen years of age. Also referred to as "minor child" in this announcement.

Child sexual abuse: "Child sexual abuse involves any sexual activity with a child where consent is not or cannot be given. This includes sexual contact that is accomplished by force or threat of force, regardless of the age of the participants, and all sexual contact between an adult and a child, regardless of whether there is deception or the child understands the sexual nature of the activity. Sexual contact between an older and a younger child also can be abusive if there is a significant disparity in age, development, or size, rendering the younger child incapable of giving informed consent. The sexually abusive acts may include sexual penetration, sexual touching, or non-contact sexual acts such as exposure or voyeurism." (From the APSAC Handbook on Child Maltreatment, 2nd edition, 2002).

Prevention of CSA: Prevention approaches are on a continuum from those that take place before CSA has occurred to prevent initial perpetration or victimization (*i.e.*, PRIMARY prevention) to those that take place after CSA has occurred to address the consequences of CSA and to prevent it from re-occurring. Although all of these approaches are important, the main emphasis of this project is on the primary prevention of perpetration. The next level of emphasis of this project is on the early identification of perpetration with the hope of preventing re-occurrence.

Prevention collaborative: A partnership that combines the expertise of child abuse prevention, sexual abuse prevention, public health, and other stakeholder agencies/organizations for the purpose of preventing child sexual abuse.

Focus on Adult and Community responsibility: Prevention programs with this focus ensure that adults, both individually and collectively (*e.g.*, as part of organizations and communities): (a) Understand the nature and scope of child sexual abuse, (b) recognize their role in the prevention of child sexual abuse, and (c) possess the knowledge and skills necessary to be actively engaged in child sexual abuse prevention efforts. For the purposes of this definition, adults include those with an interest in the safety and well-being of minor children (*e.g.* parents, spouses or other family members, teachers, friends, clergy, bystanders, etc.).

Focus on the prevention of Perpetration: Prevention programs/strategies with this focus attempt to prevent either: (a) The act of perpetration, or (b) the development of offending behavior in an individual.

Social ecological framework: A framework for understanding the complex interplay of individual, relationship, social, political, cultural, and environmental factors that influence CSA (Krug *et al.*, 2002), and also provides potential key points for prevention and intervention (Powell, Mercy, Crosby, Dahlberg, and Simon, 1999). For this project, we use the four-level ecological model presented in the World Report on Violence and Health (Krug *et al.*, 2002).

Provider behavior: Providers can be broadly defined to include clinical service providers, as well as providers of prevention programs.

Purpose: To support existing state and local collaboratives in the prevention of child sexual abuse. More specifically, the purpose of this program is to integrate strategies that address (1) adult and community responsibility (2) the prevention of perpetration and (3) all levels of the social ecology (*i.e.* individual, relationship, community, and societal) into existing state and local level collaboratives that address CSA prevention.

This program addresses the "Healthy People 2010" focus area(s) of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Goal 1—Increase the capacity of injury prevention and control programs to address prevention of injuries and violence.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: Awardee activities for this program are as follows:

1. Activities to increase capacity to have wide programmatic reach around prevention of child sexual abuse:

• Assess the makeup of the statewide collaborative for appropriate representation from traditional and non-traditional partners (*e.g.* faith leaders, health care provider organizations, etc.). Recruit missing partners in order to expand the reach of the collaborative.

2. Activities to increase capacity to integrate prevention strategies that address (1) adult and community responsibility (2) the prevention of perpetration and (3) the social ecological model into existing programming.

• Develop a five year prevention plan integrating previously conducted adult and community responsibility and perpetration prevention programming, using logic modeling, and informed by existing data (*e.g.* statewide survey of existing child sexual abuse programming, surveys, etc.) to identify prevention strategies that addresses adult and community responsibility, perpetration prevention, and multiple levels of the social ecological model to be implemented in one or more local settings. Planning should be in partnership with local level partners. Since the prevention plan extends beyond the 2-year program period, the plan should address strategies for garnering support for the implementation of the plan. Priority activities should be those that address a level of the social ecology not previously addressed by the applicant.

• Implement at least one priority activity from the prevention plan in the two-year program period.

• Attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients (two staff members; two meetings per year; two days per meeting. One meeting will be held in Atlanta; one meeting will be held in the same city as one of the funded sites.).

3. Activities to increase evaluation capacity:

• Create an evaluation subcommittee within the prevention collaborative to develop state and/or local evaluation plans. These evaluation plans should include, but are not limited to, the assessment of changes in capacity, provider behavior, and community norms.

• Implement evaluation plan(s).

• Conduct at least one community (or state level) survey addressing community norms and provider behavior around prevention of CSA, particularly on adult and community responsibility in the prevention of perpetration.

• Develop and implement measures of increased prevention capacity at state and local levels.

• Collaborate with other cooperative agreement recipients and CDC in the development of core components for the community survey and cross-site evaluation.

• Submit required reports on time.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

• Provide updated information related to the purposes and activities of this program announcement.

• Provide technical assistance and consultation, if requested, on all aspects of recipient activities, including:

○ Assessment of the makeup of the state and local collaboratives.

○ Development of a 5-year prevention plan.

○ The development of the state and local evaluation plan, including but not limited to the community survey.

• Facilitate any cross-site evaluation in collaboration with cooperative agreement recipients.

• Facilitate the technical assistance and planning meetings that will provide opportunities for awardees to increase knowledge and skills, learn from each other, share resources, and work collaboratively to address issues related to child sexual abuse prevention (two meetings per year, two days per meeting).

• Review evaluation information for presentation and publication.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: $625,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Three.

Approximate Average Award: $208,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: $175,000.

Ceiling of Award Range: $210,000.

Anticipated Award Date: September 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by an organization with state-wide reach and expertise in the primary and/or secondary prevention of child sexual abuse who are current recipients of funds for the Collaborative Efforts to Prevent Child Sexual Abuse program, Program number 02124.

The previous funding cycle was intended to allow for planning of child sexual abuse prevention efforts that focused on adult and community responsibility and the prevention of perpetration. This proposed funding cycle focuses on implementation, sustainability, and continued evaluation of these efforts.

The competition for this cooperative agreement is being limited to current Collaborative Efforts to Prevent Child Sexual Abuse (Collaborative CSA), Program Number 02124 Program recipients for the following reasons:

1. The three-year program period was a planning period for CDC, funded grantees and their partners to begin to understand and build the framework for child sexual abuse prevention that focused on adult and community responsibility and perpetrator prevention.

2. The two year program period for this proposed cooperative agreement will be an implementation and evaluation period where grantees and their state and local partners apply the lessons learned from the previous cycle to integrate the concepts of: (1) Adult and community responsibility; (2) perpetration prevention; and (3) addressing multiple levels of the social ecology to build and implement a comprehensive prevention framework and evaluation plan.

3. An additional two years will allow for the previously funded grantees to more strategically integrate the concepts of adult and community responsibility, perpetration prevention, and programming at all levels of the social ecology into their current state and local efforts to build long term sustainability of these efforts.

4. Because of the necessary planning period in the Collaborative CSA program, an additional two years is needed to build the evaluation capacity of the funded applicants in order for the state and local level evaluation to produce reliable, valid and useful results that can inform the field.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

• Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

• **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

To submit your application electronically, please utilize the forms and instructions posted for this announcement at *http://www.grants.gov.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- *Maximum number of pages:* 20. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- *Font size:* 12 point unreduced.
- Double spaced.
- *Paper size:* 8.5 by 11 inches.
- *Page margin size:* One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Applicant Organizational History, Description of Capacity.
- Applicant's Plan for Implementing this Cooperative Agreement.
- Applicant's Management and Staffing.
- Collaboration.
- Measures of Effectiveness.
- Proposed Budget Justification.

The proposed budget justification will not be counted in the stated page limit.

In addition, applicants must comply with state and local reporting requirements. Your narrative must address the importance of responding to state guidelines, state and local reporting requirements and interdisciplinary services available.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes,
- Resumes,
- Organizational Charts,
- Letters of Support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: April 4, 2005.

Explanation of Deadline: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

If you submit your application electronically, you will receive an e-mail notice of receipt.

Otherwise, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: You may submit your application electronically at: *http://www.grants.gov,* OR submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—RFA#05038, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement: To support existing state and local collaboratives in the prevention of child sexual abuse. More specifically, the purpose of this program is to integrate strategies that address: (1) Adult and community responsibility; (2) the prevention of perpetration; and (3) all levels of the social ecology (*i.e.* individual, relationship, community, and societal) into existing state and local level collaboratives that address CSA prevention.

Measures must be objective and quantitative, and must measure the intended outcome. Applicants are expected to develop three measures of effectiveness, one for each level of capacity building (collaborative, prevention planning, and evaluation), as described in Activities. These measures of effectiveness must be submitted with

the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Applicant's Plan for Implementing This Cooperative Agreement (40 points).

a. Does the applicant provide a description of the process to be used to assess the makeup of the statewide collaborative for appropriate representation from traditional and non-traditional partners (*e.g.* faith leaders, health care provider organizations, etc.)? Does the applicant provide a description of the process to be used to recruit missing partners in order to expand the reach of the collaborative?

b. Does the applicant provide a description of the process to be used to create and implement a comprehensive evaluation plan for state and local efforts? Does the applicant provide a plan for implementation of at least one survey to measure knowledge and attitudes of child sexual abuse perpetration prevention and community responsibility?

c. Does the applicant provide a description of the process to be used to develop a prevention plan that integrates: (1) Adult and community responsibility; (2) perpetration prevention; and (3) the social ecological model?

2. Applicant Organizational History, Description of Capacity (30 points).

a. Does the applicant demonstrate its ability to provide a strong leadership function in statewide efforts to prevent child sexual abuse? Does the applicant have a history of providing leadership in either state or local collaboratives that address child sexual abuse prevention efforts?

b. Does the applicant demonstrate a history of implementing child sexual abuse prevention programs or strategies based on at least one of the following foci: (1) Adult and community responsibility (2) perpetrator prevention; or (3) addressing multiple levels of the social ecology? Does the applicant demonstrate the capacity to create a 5-year prevention plan (*e.g.* past planning efforts) to integrate all three of the foci of this program?

c. Does the applicant demonstrate the capacity to develop an evaluation plan? Does the applicant demonstrate the capacity to conduct statewide or community surveys that address knowledge and attitudes? Does the applicant describe its history in administrating surveys that address knowledge and attitudes?

3. Applicant's Management and Staffing (15 points).

a. Does the applicant include their management operation or structure? An organizational chart of the applicant's organization should be included as an Appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among any involved agencies/organizations.

b. Does the applicant include a staffing plan for the project, noting existing staff as well as additional staffing needs? The responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position should be included. The specific staff positions within the other involved state level agencies, both in-kind and funded, should be described.

c. Does the applicant include resumes and/or position descriptions (*i.e.* for and in-kind and proposed positions to be funded under this cooperative agreement) in an appendix? This should include the use of consultants, as appropriate, from the identified perpetrator focused program.

d. Does the applicant include a continuation plan in the event that key staff leave the project? Does the applicant describe how new staff will be smoothly integrated into the project? Does the applicant include assurances that resources will be available when needed for this project

e. Does the applicant describe previous experience of project staff that is relevant to the goals of the program announcement?

4. Collaboration (15 points).

a. Does the applicant demonstrate an ability to identify and engage relevant stakeholders for the prevention of child sexual abuse?

b. Does the applicant include letters of support from members of its collaborative(s)? (These should be included in the appendix of the application.)

c. Does the applicant demonstrate a willingness to collaborate with other cooperative agreement recipients and CDC in the development of core components for the community survey and cross-site evaluation?

d. Does the applicant demonstrate a willingness to attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients (two staff members, two meetings per year in Atlanta, two days per meeting)?

5. Measures of Effectiveness (not rated).

Does the applicant provide objective/quantifiable measures regarding the 3 levels of capacity building (collaborative, prevention planning, and evaluation), as described in Activities.

6. Proposed Budget Justification (not scored).

Does the applicant provide a detailed budget with complete line-item justification of all proposed costs consistent with the stated activities in the program announcement? Details must include a breakdown in the categories of personnel (with time allocations for each), state travel, including funds to participate in the CDC required meetings (two staff members, two meetings per year; one in Atlanta and one in the city of a funded applicant, 2 days per meeting), communications and postage, equipment, supplies and any other costs.

The applicant should provide a detailed budget request and complete line-item justification of all proposed operating expenses consistent with the stated activities under this program announcement. Applicants should be precise about the purpose of each budget item and should itemize calculations wherever appropriate. The use of the sample budget included in the application kit is encouraged. These funds should not be used to supplant existing efforts.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel comprised of CDC-wide employees will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NOA) from the CDC Procurement and Grants Office. The NOA shall be the only binding, authorizing document between the recipient and CDC. The NOA will be signed by an authorized Grants Management Officer, and mailed to the

recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Annual progress report, due 90 days after the end of the budget period.

a. Current Budget Period Activities Objectives (for second six months of budget period).

b. New Budget Period Program Proposed Activity Objectives.

3. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Renee Wright, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE., Mailstop K60, Atlanta, GA 30341, Telephone: 770–488–1146, E-mail: *RWright@cdc.gov.*

For financial, grants management, or budget assistance, contact: James Masone, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2736, E-mail: *JMasone@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Dated: January 27, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2039 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Funding Opportunity Number: CE05–029]

Dissemination Research on Fall Prevention: Development and Testing of an Exercise Program Package to Prevent Older Adult Falls; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for cooperative agreements to conduct a research program on translating an exercise intervention that rigorous research has shown is effective in reducing falls among older adults into a program; testing implementation of the program in a community setting; and conducting dissemination research focusing on reach, uptake, feasibility, fidelity of the implementation, and acceptability was published in the **Federal Register** on November 8, 2004, Vol. 69, No. 215, pages 64762–64769.

The notice is amended as follows: On page 64765, Column 2, Section IV.1. Address to Request application Package, delete the first sentence and replace with "To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004).

Dated: January 28, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2040 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Funding Opportunity Number: CE05–020]

Youth Violence Prevention Through Community-Level Change; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for cooperative agreements to assess the efficacy or effectiveness of interventions designed to change community characteristics and social processes to reduce rates of youth violence perpetration and victimization was published in the **Federal Register** on December 30, 2004, Vol. 69, No. 250, pages 78419–78426.

The notice is amended as follows:

On page 78422, Column 2, Section IV.1. *Address to Request Application Package,* delete the first sentence and replace with "To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004).

Dated: January 28, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2038 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Funding Opportunity Number: CE05–018]

Cooperative Agreement Program for the National Academic Centers of Excellence on Youth Violence Prevention; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for cooperative agreements to to establish up to ten National Academic Centers of Excellence (ACE) on Youth Violence Prevention, serving as national models for the prevention of youth violence, was published in the **Federal Register** on November 22, 2004, Vol. 69, No. 224, pages 67915–67930.

The notice is amended as follows:

On page 67917, Column 3, Section IV.1. Address to Request application Package, delete the first sentence and replace with "To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004).

Dated: January 28, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2044 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC) has announced the following committee meeting where petitions for designation of classes of employees as members of the Special Exposure Cohort (SEC) will be considered for the Mallinckrodt Destrehan Street Plant and the Iowa Army Ammunition Plant.

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Committee Meeting Times and Dates: 1 p.m.–5 p.m., February 7, 2005, 8 a.m.–4:45 p.m., February 8, 2005, 7 p.m.–8:30 p.m., February 8, 2005, 8:30 a.m.–4:30 p.m., February 9, 2005.

Place: Adam's Mark St. Louis, 4th and Chestnut Street, St. Louis, Missouri 63102, telephone (314) 241–7400, fax (314) 241–9839.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 500 people.

Matters to be Discussed: This notice provides further information regarding two items on the agenda for this meeting. First, NIOSH is seeking the ABRWH's guidance on dealing with dose reconstruction data when questions are raised about the authenticity and reliability of the data. Second, NIOSH is seeking guidance from the ABRWH on the findings of the SEC Petition Evaluation Reports—Mallinckrodt Chemical Company, Destrehan Street Plant, the entire uranium division, 1942–1957, St. Louis, Missouri, and Petitioners Comments on Report; and the NIOSH SEC Petition Evaluation Report—Iowa Army Ammunition Plant (IAAP), Line 1 and associated areas, 1947–1974, Burlington, Iowa, and Petitioners Comments on Report. The NIOSH SEC Petition Evaluation Report for Mallinckrodt 1942–1945 and for Mallinckrodt 1946–1957 find that radiation doses cannot be estimated with sufficient accuracy and that there is a reasonable likelihood that such radiation dose may have endangered the health for Mallinckrodt Chemical Company, Destrehan Street Plant uranium division employees from 1942–1948. The NIOSH SEC Petition Evaluation Report for Mallinckrodt 1946–1957 finds that dose reconstructions may or may not be feasible from 1949–1957. NIOSH also seeks the guidance of the ABRWH on the NIOSH SEC Petition Evaluation Report—Iowa Army Ammunition Plant that finds that records and/or information necessary to publicly evaluate part of the IAAP SEC Petition are not, and will not be available on a transparent and timely basis.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Lewis Wade, Senior Science Advisor to the Director, NIOSH, CDC, 200 Independence Avenue, SW., Room 717H, Washington, DC 20201, telephone (202) 401–6997; fax (202) 205–2207.

Dated: February 1, 2005.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–2201 Filed 2–1–05; 2:22 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Acute Injury Care Research Agenda for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Draft Acute Injury Care Research Agenda for the National Center for Injury Prevention and Control.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of the Draft Acute Injury Care Research Agenda for the National Center for Injury Control and Prevention (NCIPC) and solicits comments during the public comment period of February 3, 2005, through March 3, 2005. In June 2002, NCIPC released its current Injury Research Agenda, which outlines the Center's injury research direction through 2007. The NCIPC Research Agenda highlights seven key injury research areas: Injuries at home and in the community, recreation, transportation, violence, suicide, youth violence, and acute care, disability, and rehabilitation. The NCIPC Research Agenda was being completed when the events of September 11, 2001, occurred; that event led NCIPC to revisit the agenda and see what, if any, gaps existed and needed to be addressed. This analysis revealed that out of the thirteen priority areas for research in the area of acute care, disability, and rehabilitation, only three dealt specifically with acute injury care.

Recognizing this limited focus, the NCIPC decided to supplement the current research agenda by extending the acute injury care portion of the agenda, focusing on the intersection between public health and acute injury care research.

Over the past year, NCIPC has been developing an Acute Injury Care Research Agenda based on input from external experts in the field of acute injury care (*e.g.*, emergency medical services, emergency medicine, trauma surgery, public health), Federal partners, and internal staff. The objectives presented will be appended to the acute care section of the NCIPC Research Agenda. The proposed six research objectives and four infrastructure objectives are as follows:

Research Objectives

(1) Evaluate how mass casualty and disaster situations impact the provision of acute injury care.

(2) Evaluate strategies to translate, disseminate and implement science-based recommendations and guidelines for the care of the acutely injured.

(3) Develop and evaluate new or existing health quality measures to better assess outcomes for persons treated in a pre-hospital or hospital acute injury care setting.

(4) Identify individual, sociocultural and community factors that impact on the immediate and long-term care of the acutely injured.

(5) Develop and evaluate acute injury treatment strategies that will result in evidence-based management for persons who sustain a life-threatening injury or one that could lead to significant disability.

(6) Determine and evaluate the components of pre-hospital and hospital trauma systems that lead to improvements in outcome for the acutely injured.

Infrastructure Objective

(1) Build the acute injury care research infrastructure through the development of an Acute Injury Care Research Network (AICRN).

(2) Determine how existing databases can best be utilized to assess and improve systems of acute injury care.

(3) Develop new training programs and expand and restructure existing training and education for health professionals in injury care, prevention and research.

(4) Determine, evaluate, and address current obstacles in conducting acute injury care research.

Interested persons are invited to comment on the Draft Acute Injury Care Research Agenda. NCIPC will not be able to respond to individual comments, but all comments received by March 3, 2005; will be considered before the final Acute Injury Care Research Agenda is published. A more detailed background document is available upon request. Send requests and comments electronically to *DARDInfo@cdc.gov*.

Dated: January 27, 2005.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 05–2041 Filed 2–2–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10139]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because the normal procedures are likely to cause a statutory deadline to be missed. It is critical to complete the survey and analysis for a Report to Congress due June 2005.

Section 704(C)(2) requires CMS to conduct a study on how non-Medicare/Medicaid Outcome and Assessment Information Set (OASIS) is used by large and small home health agencies (HHA's). The study will investigate whether there are unique benefits from the analysis of such information, the value of collecting such information by small HHA's compared to the administrative burden, a comparison of outcomes for non-Medicare/non-Medicaid patients and Medicare/Medicaid patients, and obtain the opinions of quality assessment experts. The study will consist of a mailed survey of 1200 home health agencies.

CMS is requesting OMB review and approval of this collection by March 7, 2005, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by March 4, 2005.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by March 4, 2005:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C5–13–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: William N. Parham, III, CMS–10139 and, OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 28, 2005.

John P. Burke, III,

CMS Paperwork Reduction Act Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group.

[FR Doc. 05–2074 Filed 2–2–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration Drug Educational Forum; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Center for Drug Evaluation and Research (CDER), in collaboration with FDA's Office of Regulatory Affairs (ORA), Southwest Regional Office (SWRO), is announcing a public workshop entitled "FDA Drug Educational Forum." This public workshop is intended to provide information about FDA's premarket requirements to the drug industry, particularly small businesses, startups, and entrepreneurs.

Date and Time: The public workshop will be held on May 11, 2005, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Kansas City Health Department Auditorium, 2400 Troost Ave., Kansas City, MO 64108–2666. For directions to the facility, please call 816–513–6008, e-mail: *health@kcmo.org*, or visit *http://www.kcmo.org/health.nsf/web/healthmap?opendocument*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Contact: David Arvelo or Cassandra Davis, Food and Drug Administration, 4040 N. Central Expressway, suite 900, Dallas, TX 75204–3128, 214–253–4952 or 214–253–4951, FAX: 214–253–4970, e-mail: *oraswrsbr@ora.fda.gov*.

Registration: Registration begins on April 6, 2005, and ends May 6, 2005. Registration is free. Seats are limited, please register as soon as possible. Space will be filled in order of receipt of registration. Those registered will receive confirmation. Registration will close after available space fills. Registration at the site will be based on space availability on the day of the event starting at 8 a.m.

If you need special accommodations due to disability, please contact David Arvelo or Cassandra Davis (see *CONTACT*) at least 7 days in advance.

Registration Form Instructions: To register, complete the following registration form and submit via:

- E-mail: *oraswrsbr@ora.fda.gov*,
- FAX: 214–253–4970, or
- Mail to: Food and Drug Administration, Southwest Regional Office, Small Business Representative, 4040 N. Central Expressway, suite 900, Dallas, TX 75204–3128.

Name: _____

Company Name: _____

Mailing Address: _____

City: _____ State: _____

Zip Code: _____

Phone: ( ) _____

Fax: ( ) _____

E-mail: ( ) _____

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The public workshop is being held in response to the interest in the topics discussed from small drug manufacturers, startups, and entrepreneurs in the FDA Southwest Region area. FDA, CDER, and ORA present this public workshop to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is also consistent with the purposes of FDA's Regional Small Business Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This public workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

The goal of the public workshop is to present information that will enable manufacturers and regulated industry to better comply with the new drug approval process (21 CFR part 314). Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the public workshop include the following: (1) Planning for successful, efficient, pharmaceutical product approval; (2) current challenges and concerns for generic abbreviated new animal drug applications (ANDAs); (3) regulatory aspects and challenges in the development of over-the-counter (OTC) Drugs; (4) the basics of chemistry, manufacturing and control; (5) FDA 483 issues; (6) mastering regulatory compliance; and (7) incentives for small businesses.

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2098 Filed 2–2–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0036]

Use of Color on Pharmaceutical Product Labels, Labeling and Packaging; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Center for Drug Evaluation and Research (CDER) of the Food and Drug Administration (FDA) is announcing a public hearing on the current practice of applying color to pharmaceutical product packaging and labeling to help identify, classify, and differentiate those drug products. To date, there is little scientific evidence that applying color is effective in reducing medication errors. Furthermore, there is no validated scientific method to corroborate the benefits of using colors on pharmaceuticals in this fashion. FDA does not have a policy pertaining to the use of colors on drug product packaging. The purpose of the hearing is to obtain public input on the benefits and potential drawbacks of applying color to drug packaging and labeling to help identify, classify, or differentiate those products.

DATES: The public hearing will be held on March 7, 2005, from 8 a.m. to 4:30 p.m. Submit written or electronic notices of participation and comments for consideration at the hearing by February 11, 2005. Written or electronic comments will be accepted after the hearing until April 7, 2005. The administrative record of the hearing will remain open until April 7, 2005.

ADDRESSES: The public hearing will be held at Lister Hill Auditorium, Building 38A, on the campus of the National Institutes of Health, Bethesda, MD (Metro stop: Medical Center Station on the Red Line). Submit written or electronic notices of participation and comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852; e-mail *FDADockets@oc.fda.gov*; or on the Internet at *http://frwebgate.access.gpo.gov/cgi-bin*. Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://frwebgate.access.gpo*, approximately 30 days after the hearing.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3216, *grossm@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The following color techniques are used on pharmaceutical products and medical devices:

• Color Coding—Color coding is the systematic standard application of color to aid in the classification and identification of drug products. A color coding system allows people to memorize a color and match it to its function.

• Color Differentiation—Color differentiation involves the use of color to make certain features on the package stand out or to help distinguish one item from another. The color itself is not a standard code that is applied systematically to classify and identify the product, as with color coding.

• Color Branding—Color branding is a newly applied concept introduced by a single manufacturer of insulin products. Color branding is used to differentiate one drug product from another and is managed by the individual sponsor. The sponsor recommended this tool in an effort to minimize error between an insulin analogue and another product containing a mix of insulin analogues.

• Color Matching—Color matching is sometimes applied in an effort to reduce the risk of errors. For example, a medical device may have a blue plug that attaches to a blue receptacle and a yellow plug that attaches to a yellow receptacle. However, the colors have no special meaning beyond matching one item with another.

In the **Federal Register** of May 13, 1998 (63 FR 26694), FDA published a direct final rule entitled "Removal of Regulations Regarding Certification of Drugs Composed Wholly or Partly of Insulin." Included in the rule was the removal of § 429.12 (21 CFR 429.12) that contained a distinguishing color scheme for insulin products. At that time, the agency was favorably impressed with the cooperative effort between the insulin manufacturers and the International Diabetes Foundation (IDF) that resulted in a new color coding system in which each insulin product would be identified with a distinctive color. Although some insulin products have been approved with the IDF colors, the agency has not taken a position on whether to fully implement the IDF color scheme for insulin products, nor has FDA taken a public position on the acceptability of adopting any other color scheme currently in use.

A number of drug product and device manufacturers use color schemes as described previously in this document in an effort to facilitate the selection and dispensing of drugs. For example, ophthalmic, anesthetic, dental, and insulin drug products, as well as medical devices, all use color to classify, identify, or differentiate drugs among the same class or facilitate the correct use of medical devices. Individual practitioner groups often endorse the use of colors to help differentiate among drugs. Many drugs are marketed with similar labeling and labels which contributes to an already complex prescribing and dispensing environment. Sight challenged ophthalmic patients count on color coding to identify their products. Patient safety groups, however, argue that broad application of color techniques is unproven, controversial, and could be a contributing factor in medication errors.[1]

II. Scope of the Hearing

FDA is interested in obtaining public comment on the following issues:

• How and under what circumstances has the use of color on pharmaceutical packaging and/or labeling demonstrated an improvement in patient care? If there is no discernible improvement, please describe what you consider to be deficiencies in the program.

• Are there specific classes of drugs where use of color has demonstrated value? Are there classes where use of color is a hindrance to public safety?

• Are there drug products currently marketed that do not use color but should use color to aid in identification of the drug? If so, how should color be used?

• How should the effectiveness of application of color on drug products be scientifically validated?

[1]Citations regarding the role of color coding and medication error reduction may be accessed at Report 5 of the Council on Scientific Affairs (A–04) Full Text—The Role of Color Coding in Medication Error Reduction. The article is accessible at: *http://www.ama-assn.org/ama/pub/category/13662.html* (FDA has verified the Web site address but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner or his designee. The presiding officer will be accompanied by a panel of FDA employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written or electronic notice of participation with the Division of Dockets Management (see **ADDRESSES** and **DATES**). To ensure timely handling, any outer envelope should be clearly marked with the docket number listed in brackets in the heading of this notice along with the statement "Use of Color on Drug Product Packaging Hearing." Groups should submit two written copies. The notice of participation should contain the potential presenter's name; address; telephone number; affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; a brief summary of the presentation; and the approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant of the time allotted to the presenter and the approximate time that presenter's oral testimony is scheduled to begin. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the schedule will be placed on file in the Division of Dockets Management (see **ADDRESSES**) under the docket number listed in brackets in the heading of this notice.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under § 10.205

(21 CFR 10.205), representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript will be available on the Internet at *http://www.fda.gov/ohrms/dockets*, and orders for copies of the transcript can be placed at the meeting or through the Division of Dockets Management (see **ADDRESSES**).

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of these provisions as specified in § 15.30(h).

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic notices of participation and comments for consideration at the hearing (see **DATES**). Submit a single copy of written or electronic notices of participation and comments, or two paper copies of any mailed notices of participation and comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2094 Filed 1–31–05; 3:37 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: March 1, 2005, 9 a.m.–5 p.m. March 2, 2005, 8:30 a.m.–3 p.m.

Place: Sheraton National Hotel, 900 South Orme Street, Arlington, Virginia 22204, (703) 521–1900.

Status: The meeting is open to the public with attendance limited to space availability.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs that are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start program and *Healthy People 2010* infant mortality objectives.

Agenda: Topics that will be discussed include the following: Improving Perinatal Data; Neonatal Intensive Care and Ethical Issues; and Provider Reimbursement Issues. Substantial time will be spent in small group and full Committee discussions aimed at formulating the ACIM issues agenda. Proposed agenda items are subject to change as priorities indicate.

Time will be provided for public comments limited to five minutes each; comments are to be submitted no later than February 15, 2005.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–2170.

Individuals who are submitting public comments or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr. P.H., HRSA, Maternal and Child Health Bureau, telephone: (301) 443–6327, e-mail: *akoontz@hrsa.gov*.

Dated: January 31, 2005.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–2102 Filed 2–2–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; (240) 276–2600 (voice), (240) 276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that

certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661 / 800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823 (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042 / 800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734.

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: NOVAMANN (Ontario) Inc.).

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.

Northwest Toxicology, a LabOne Company, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–293–2300 / 800–322–3361 (Formerly: LabOne, Inc., d/b/a Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991 / 800–541–7897, x7.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339 -0372 / 800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 / 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995 / 847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176, x276.
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507 / 800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400 (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–2139 Filed 2–2–05; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Information Analysis and Infrastructure Protection; Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS), Department of Homeland Security.

ACTION: Committee management; notice of advisory committee renewal.

SUMMARY: The Department of Homeland Security (DHS) has renewed the charter for the Telecommunications Service Priority (TSP) System Oversight Committee.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2, *et seq.*) the Secretary of Homeland Security has renewed the charter for the TSP System Oversight Committee. This renewal follows consultation with the Committee Management Secretariat, General Services Administration and has been determined by the Secretary to be in the public interest in connection with the performance of duties imposed on DHS by law.

The TSP System Oversight Committee identifies and reviews any problems developing in the TSP System and recommends actions to correct them or prevent recurrence. The TSP System Oversight Committee Designated Federal Officer is Lt. Col. Joanne Sechrest, USAF.

FOR FURTHER INFORMATION CONTACT: Susan Flint, NCS Office of Priority Telecommunications, 703–607–4932. Media or press should contact Mr. Steve Barrett at 703–607–6211.

Peter M. Fonash,

Acting Deputy Manager, National Communications System.

[FR Doc. 05–2093 Filed 2–2–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19977]

Inspection of Towing Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments, and notice of public meeting; change of location.

SUMMARY: The location of the upcoming public meeting being held in New Orleans, Louisiana, is changed. Instead of the Hale Boggs Federal Building, as previously announced in the **Federal Register**, the meeting will take place at the Hyatt Regency New Orleans. The date of the meeting, February 10, and the hours, from 9 a.m. to 12 p.m. remain the same. In the recently enacted Coast Guard and Maritime Transportation Act of 2004, the Congress directed the Coast Guard to add towing vessels to the list of vessels subject to inspections, and to consider the establishment of a safety management system appropriate for towing vessels. Through public meetings, we are seeking public and industry involvement as we consider how to proceed.

DATES: Comments and related material must reach the Docket Management Facility on or before March 23, 2005. A public meeting will be held on February 10, 2005, in New Orleans, LA. Meetings in Oakland, CA, and St. Louis, MO, remain unchanged as previously announced in the **Federal Register** [69 FR 78471].

ADDRESSES: *Comments.* You may submit comments identified by Coast Guard docket number USCG–2004–19977 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

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

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

Meeting. The meeting in New Orleans will be held at the following location: Hyatt Regency New Orleans, Cabildo Room, Poydras at Loyola Avenue, New Orleans, LA 70113.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Thomas Scott Kuhaneck, Domestic Vessel Compliance Division (G–MOC–1), U.S. Coast Guard, telephone 202–267–0240, or e-mail: *TKuhaneck@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to our request for comments, by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" three paragraphs below.

Submitting comments: If you submit a comment, please include your name and address, identify docket number (USCG–2004–19977), indicate the specific question, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

The meeting will be held—

- February 10, 2005, 9 a.m. to 12 p.m., at Hyatt Regency New Orleans, Cabildo Room, Poydras at Loyola Avenue, New Orleans, LA 70113.

Questions

We need the public's assistance in answering the following questions, and any additional information provided on this topic is welcome.

In responding to each question, please explain your reasons for each answer as specifically as possible so that we can carefully weigh the consequences and impacts of any future actions we may take.

(1) Towing vessels of a certain size (300 or more gross register tons) are already inspected vessels and are subject to a variety of existing requirements. Should the Coast Guard use any of these existing standards (or standards for other types of inspected vessels) for incorporation into the new regulations regarding the inspection of towing vessels? If so, which regulations or standards should be incorporated into these new regulations?

(2) Title 46, United States Code, specifies the items covered with regard to inspected vessels including lifesaving, firefighting, hull, propulsion equipment, machinery and vessel equipment. However, the legislation that added towing vessels to the list of inspected vessels, authorized that the Coast Guard may prescribe different standards for towing vessels than for other types of inspected vessels. What, if any, different standards should be considered with regard to inspected towing vessel requirements from other inspected vessels?

(3) Towing vessels vary widely in terms of size, horsepower, areas of operation, and type of operation. Under what circumstances, if any, should a towing vessel be exempt from the requirements as an inspected vessel?

(4) Should existing towing vessels be given time to implement requirements, be "grandfathered" altogether from them, or should this practice vary from requirement to requirement?

(5) Should existing towing vessels be treated differently from towing vessels yet to be built?

(6) The same act that requires inspection of towing vessels authorizes the Coast Guard to develop a safety management system appropriate for the towing vessels. If such a system is developed, should its use be required for all inspected towing vessels?

(7) Examples of existing safety management systems include the international safety management (ISM) code and the American Waterways Operators Responsible Carrier Program. If a safety management system is used, what elements should be included in such a system?

Procedural

The meeting is open to the public. Attendees may make oral presentations during the meeting. Please note that the meeting may close early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Thomas Scott Kuhaneck at the address under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: January 31, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

[FR Doc. 05–2095 Filed 1–31–05; 3:37 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; State Certification of Expenditures, Public Law 106–408; OMB Control No. 1018–0117

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Fish and Wildlife Service (We) plans to submit the collection of information described below to OMB for renewal under the provisions of the Paperwork Reduction Act of 1995. The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Pub. L. 106–408) requires that States certify annually in writing that their expenditures of Federal grant funds under the Federal Aid in Wildlife and Sport Fish Restoration Acts were in accordance with the appropriate Act.

DATES: You must submit comments on or before April 4, 2005.

ADDRESSES: Send your comments on this information collection to Hope

Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203; *hope_grey@fws.gov* (email); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, form, or related materials, contact Hope Grey at the above addresses or by telephone at 703–358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)).

We administer grant programs authorized by the Federal Aid in Wildlife and Sport Fish Restoration Acts. The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 requires that States certify annually in writing that their expenditures of these Federal grants funds were in accordance with the appropriate Act. We must forward these certifications to Congress annually by December 31. The OMB control number for this information collection is 1018–0117, and the OMB approval for this collection expires on May 31, 2005. We plan to send a request to OMB to renew its approval of this information collection for a 3-year term. 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.

Title: State Certification of Expenditures, Public Law 106–408.

OMB Control Number: 1018–0117.

Form Number: FWS Form 3–2197a.

Frequency of Collection: Annually.

Description of Respondents: States, Commonwealth of Puerto Rico, District of Columbia, Commonwealth of the Northern Mariana Islands, Guam, U.S. Virgin Islands, and American Samoa.

ANNUAL BURDEN ESTIMATES

Name	Completion time per form	Total annual number of responses	Total annual burden hours
State certification of spending (FWS Form 3–2197a)	30 minutes	56	28

We invite comments on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the 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 collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 21, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–2013 Filed 2–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Conservation Plan and Environmental Assessment for Rice Lake and Mille Lacs National Wildlife Refuges in East Central Minnesota and Horicon and Fox River National Wildlife Refuges (NWR) in Southeast Wisconsin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare Comprehensive Conservation Plans (CCP) and Environmental Assessments (EA) for the following National Wildlife Refuges: Rice Lake NWR in Aitkin and Pine Counties, Minnesota and Mille Lacs NWR in Mille Lacs County, Minnesota, which are managed by Rice Lake NWR staff, and Horicon NWR in Dodge and Fond du Lac Counties, Wisconsin and Fox River NWR in Marquette County, Wisconsin, which are managed by Horicon NWR staff. The CCPs will describe how we intend to manage the refuges for the next 15 years.

The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act (NEPA).

Open house style meetings and possibly focus group meetings and workshops will be held during the scoping phase of the CCP development process to obtain additional suggestions and information on the scope of alternatives and impacts to be considered.

In addition, the Service is inviting comments on archeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act. Cultural resource overview studies will be conducted to identify known historic and cultural sites on the refuges.

Special mailings, newspaper articles, Internet postings, and other media announcements will inform people of the opportunities for written comments.

ADDRESSES: Comments for Rice Lake NWR or Mille Lacs NWR can be mailed to: Refuge Manager, Rice Lake National Wildlife Refuge, 36289 State Highway 65, McGregor, Minnesota 55760 or submit comments electronically at the following Web site: *http://midwest.fws.gov/planning/ricelake/index.html.*

Comments for Horicon NWR or Fox River NWR can be mailed to: Refuge Manager, Horicon National Wildlife Refuge, W4279 Headquarters Road, Mayville, Wisconsin 53050 or submit comments electronically at the following Web site: *http://midwest.fws.gov/planning/horicon/index.html.*

You may also find information on the CCP planning process and submit comments electronically at the planning Web site: *http://midwest.fws.gov/planning/index.html* or you may e-mail comments to: *r3planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stefanski, Rice Lake NWR, at (218) 768–2402 or Patti Meyers, Horicon NWR, at (920) 387–2658.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*) requires the Service to develop a CCP for each National Wildlife Refuge. The purpose

in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The CCP planning process will consider many elements, including wildlife and habitat management, habitat protection and acquisition, wilderness preservation, public recreational activities, and cultural resource preservation. Public input into this planning process is essential.

The Service will prepare an Environmental Assessment (EA) in accordance with procedures for implementing NEPA found in the Departmental Manual 516 DM 6, Appendix 1.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: January 7, 2005.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, Region 3.

[FR Doc. 05–2083 Filed 2–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2005 Tribal Landowner Incentive Program; Request for Grant Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Landowner Incentive Program (TLIP). The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2005 allocated $ 21,694,365 from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under a Landowner Incentive Program. The Service has targeted $2,126,048 for TLIP.

DATES: Project proposals must be postmarked by April 4, 2005 and submitted to the appropriate Regional Office (*see* Table 1 in **ADDRESSES**).

ADDRESSES: For information regarding collection requirements and application kit, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below: Information on the TLIP is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, and electronically at *http://grants.fws.gov/tribal.html.*

Project proposals should be submitted to the Service's Regional Office for the State in which the proposed project would occur (see Table 1 under this section). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone number
Region 1	Hawaii, Idaho, Oregon, Washington, Nevada, and California.	Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181.	Scott L. Aikin (503) 231–6123
Region 2	Arizona, New Mexico, Oklahoma, and Texas	Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., P.O. Box 1306, Albuquerque, NM 87103–1306.	John Antonio (505) 248–6810
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111–4080.	John Leonard (612) 713–5108
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.	Regional Director, U.S. Fish and Wildlife Service, 1875 Century Blvd, Rm. 410, Atlanta, GA 30345.	James D. Brown (404) 679–7125 or Kyla Hastie (404) 679–7133
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	D.J. Monette (413) 253–8662
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director, U.S. Fish and Wildlife Service, 134 Union Boulevard, Suite 400, Lakewood, CO 80228.	David Redhorse (303) 236–4575

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS—Continued

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone number
Region 7	Alaska	Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Tony DeGange (907) 786–3492

Request for Proposals: The Service invites submission of grant proposals for the protection and management of habitat to benefit federally listed, proposed, or candidate species or other at-risk species from federally recognized Indian tribal governments (including Alaska Native Villages). This program supports the efforts of tribal governments in programs that develop or augment the capacity to manage, conserve, or protect fish and wildlife species of concern through the provision of funding and technical support.

For complete application guidelines, please refer to *http://grants.fws.gov/tribal.html* or contact the Native American Liaison in your Fish and Wildlife Service Region (*see* Table 1 in **ADDRESSES**). The Application Kit outlines program requirements, selection criteria, and award procedures.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208–4133.

Dated: January 25, 2005.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–2091 Filed 2–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2005 Tribal Wildlife Grants; Request for Grant Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Wildlife Grants program (TWG). The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2005 authorized an appropriation of $69,027,526 for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and Tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use $ 5,916,645 of the funds for a competitive grant program available to federally recognized Indian Tribes. This allows the Secretary, through the Director of the Service, to manage a separate Tribal grant program not subject to the provisions of the formula-based State Wildlife Grants program, or other requirements of the State Wildlife Grants portion of Pub. L. 107–63.

DATES: Project proposals must be postmarked by April 4, 2005 and submitted to the appropriate Regional Office (see Table 1 in **ADDRESSES**).

ADDRESSES: For information regarding collection requirements and application kit, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TWG is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, fax (202) 501–3524 and electronically at *http://grants.fws.gov/tribal.html.*

Send your project proposal to the Service's Regional Office for the State in which the proposed project would occur (*see* Table 1 under this section). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone number
Region 1	Hawaii, Idaho, Oregon, Washington, Nevada, and California.	Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181.	Scott L. Aikin, (503) 231–6123.
Region 2	Arizona, New Mexico, Oklahoma, and Texas.	Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., P.O. Box 1306, Albuquerque, NM 87103–1306.	John Antonio, (505) 248–6810.
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111–4080.	John Leonard, (612) 713–5108.
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.	Regional Director, U.S. Fish and Wildlife Service, 1875 Century Blvd., Rm. 410, Atlanta, GA 30345.	James D. Brown, (404) 679–7125 or Kyla Hastie, (404) 679–7133.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS—Continued

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone number
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	D.J. Monette, (413) 253–8662.
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director, U.S. Fish and Wildlife Service, 134 Union Boulevard, Suite 400, Lakewood, CO 80228.	David Redhorse, (303) 236–4575.
Region 7	Alaska	Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Tony DeGange, (907) 786–3492.

Request For Proposals: The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. This program supports the efforts of federally recognized Tribal governments in projects that develop or augment the capacity to manage, conserve, or protect fish and wildlife resources through the provision of funding and technical support.

For complete application guidelines, please refer to *http://grants.fws.gov/tribal.html* or contact the Native American Liaison in your Fish and Wildlife Service Region (*see* Table 1 in **ADDRESSES**). The Application Kit outlines program requirements, selection criteria, and award procedures.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208–4133.

Dated: January 25, 2005.

Marshall Jones,

Director, Fish and Wildlife Service.

[FR Doc. 05–2090 Filed 2–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Agency Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is submitting this information collection to the Office of Management and Budget for renewal of the Indian Child Welfare Annual Report form. The information collected will aid the BIA in fulfilling requirements of law. This renewal meets the requirements of the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before March 7, 2005.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to the attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, either by facsimile at (202) 395–6566, or by e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy to Larry Blair, Bureau of Indian Affairs, Department of the Interior, 1951 Constitution Avenue, NW., Mail Stop–320–SIB, Washington, DC 20240. Telephone: (202) 513–7621.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair at (202) 513–7621, Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection required by the use of this form is necessary to comply with Public Law 95–608, the Indian Child Welfare Act, and as codified in 25 CFR part 23, Indian Child Welfare Act (ICWA). This information is collected through the use of a consolidated caseload form by tribal Indian Child Welfare Act program directors who are the providers of the ICWA services. The information is used to determine the extent of service needs in local Indian communities, assessment of the Indian Child Welfare Act program effectiveness, and to provide data for the annual program budget justification. The responses to this request for information collection are voluntary and the aggregated report is not considered confidential. The public is not required to respond unless a currently valid OMB control number is displayed.

II. Request for Comments

We requested comments on the proposed renewal in the **Federal Register** (69 FR 65629) on November 15, 2004. No comments were received. You may submit comments to OMB at the address provided in the **ADDRESSES** section with a copy to the Bureau of Indian Affairs within 30 days concerning the following:

(a) the necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) ways we could enhance the quality, utility and clarity of the information to be collected; and,

(d) ways we could minimize the burden of the collection of the information on therespondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB is required to respond to this request within 60 days after publication of this notice in the **Federal Register**, but may respond after 30 days; therefore, your comments should be submitted to OMB within 30 days of publication to assure maximum consideration.

III. Data

Title: Department of the Interior, Bureau of Indian Affairs, Indian Child Welfare Act Annual Report, 25 CFR 23.4.

OMB Control Number: 1076–0131.

Type of Review: Renewal.

Brief Description of Collection: Indian tribes are required to collect selected data on Indian child welfare cases and submit them to the Bureau for consolidation. This data is useful on a local level, to the tribes and tribal organizations that collect it, for case management purposes and on nationwide bases for planning and budget purposes.

Respondents: Indian tribes or tribal entities who are operating programs for Indian tribes.

Number of Respondents: 536.

Estimated Time Per Response: 30 minutes.

Frequency of Response: Quarterly.

Estimated Annual Burden to Respondents: 1072 hours.

Dated: January 27, 2005.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 05–2056 Filed 2–2–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–EU; NMNM 100778]

Recreation and Public Purposes (R&PP) Act Classification; Lease and Conveyance of Public Land in Sierra County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction.

SUMMARY: In **Federal Register**, Vol. 70, No. 2, Notices, beginning on page 379 in the issue of Tuesday, January 4, 2005, make the following correction. Under the **SUPPLEMENTARY INFORMATION** heading, the legal description should read:

New Mexico Principal Meridian

T. 13 S., R. 4 W., NMPM
Sec. 10, lot 5
Containing 5 acres, more or less.

Dated: January 27, 2005.

Edwin L. Roberson,

Field Manager, Las Cruces.

[FR Doc. 05–2084 Filed 2–2–05; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF JUSTICE

Notice of Lodging of First Round De Minimis Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on January 6, 2005, a proposed First Round De Minimis Consent Decree in *United States* v. *Aetna Inc., et al.* Civil Action No. 05–15, (Related Case *United States* v. *Allegheny Ludlum Corp., et al.*, C.A. No. 97–1863) was lodged with the United States District Court for the Western District of Pennsylvania.

In the *Aetna, Inc., et al.* action the United States seeks the recovery of response costs incurred in connection with the Breslube Penn Superfund Site, located in Coraopolis, Moon Township, Pennsylvania. The complaint alleges that each of the named defendants either arranged for the treatment and/or disposal of wastes containing hazardous substances at the Site, or transported wastes containing hazardous substances to the Site, and selected the Site, within 42 U.S.C. 9607(a). The complaint names 72 defendants, each of which have signed the proposed First Round De Minimis Consent Decree. Under the Consent Decree, each of the 72 named defendants would pay a proportionate share of all past and future response costs incurred and to be incurred at the Site, plus a premium. Further, under the Consent Decree, all Federal agencies that had wastes treated and/or disposed of at the Site, shall likewise pay a proportionate share of all past and future response costs incurred and to be incurred at the Site, plus a premium. In return for these payments, the 72 defendants and Federal agencies would receive a covenant not to sue (or not to take administrative action) by the United States, subject to certain reservations of rights, and contribution protection from suit by other potentially responsible parties. The total recovery under this Consent Decree should be approximately $890,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the First Round De Minimis Consent Decree in *United States* v. *Aetna, Inc., et al.* Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Aetna, Inc., et al.* D.J. Ref. 90–11–3–1762/1.

The *Aetna, Inc. et al.* Consent Decree may be examined at the Office of the United States Attorney for the Western District of Pennsylvania, at 700 Grant Street, Suite 400, Pittsburgh, PA 15219 (ask for Jessica Lieber Smolar) and at U.S. EPA Region III's Office, 1650 Arch Street, Philadelphia, PA (ask for Mary Rugala). During the public comment period, the *United States* v. *Aetna, Inc., et al.* consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $31.00 (25 cents per page reproduction cost) for a full copy of the consent decree, or $13.00, for a copy without signature pages, payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–2004 Filed 2–2–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Reports of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 218, page 65455 on November 12, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: Persons handling listed chemicals and tableting and encapsulating machines are required to report thefts, losses and suspicious orders pertaining to these items. These reports provide DEA with information regarding possible diversion to illicit drug manufacture.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* DEA estimates that 1,500 persons respond as needed to this collection. Responses take 15 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection takes 375 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 31, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–2032 Filed 2–2–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Application for Permit to Export Controlled Substances—DEA form 161.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 212, page 64109 on November 3, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Permit to Export Controlled Substances—DEA Form 161.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: DEA Form 161. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: Title 21 CFR 1312.22 requires persons who export controlled substances in Schedules I and II to obtain a permit from DEA. Information is used to issue export permits, exercise control over exportation of controlled substances, and compile data for submission to the United Nations to comply with treaty requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* DEA estimates that it takes 222 respondents an average of 30 minutes to respond on an as needed basis, submitting 2,444 forms annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that the

annual burden for this collection is 1,222 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 31, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–2033 Filed 2–2–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Notice of Proposed Amendment; Prohibited Transaction Exemption (PTE) 99–29 Involving Bankers Trust Company, Deutsche Bank Trust Company Americas (DBTCA), and Deutsche Bank, AG

[Application No. D–11246]

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption, which, if granted, would amend PTE 99–29 (64 FR 40623, July 27, 1999), an exemption granted to Bankers Trust Company. PTE 99–29 permits DBTCA (formerly known as Bankers Trust Company) to continue to function as a qualified professional asset manager (QPAM) under PTE 84–14 (49 FR 9494, March 13, 1994). If granted, the proposed exemption would affect participants and beneficiaries and fiduciaries of employee benefit plans to which DBTCA served as custodian.

EFFECTIVE DATE: If adopted, the proposed amendment will be effective as of January 31, 2003.

DATES: Written comments and requests for a public hearing should be received by the Department on or before March 21, 2005.

ADDRESSES: All written comments and requests for a public hearing should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, (Attention D–11246), by fax to (202) 219–0204, or by e-mail to *moffitt.betty@dol.gov*. The application pertaining to the proposed exemption and the comments received will be available for public inspection in EBSA's Public Documents Room, U.S. Department of Labor, Room N–1513, 200 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 693–8540. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend PTE 99–29. Section I of PTE 99–29 conditionally permits Banks Trust Company [1] to continue to function as a QPAM pursuant to PTE 84–14, notwithstanding its failure to satisfy section I(g) of PTE 84–14. Section I(g) specifies that:

> Neither the QPAM nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of: Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of the Employee Income Retirement Security Act of 1974 (ERISA or the Act). For purposes of this section (g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

Section I of PTE 99–29 was effective for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending on July 27, 2004, as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information entered in the U.S. District Court for the Southern District of New York (the Information), provided that the conditions of the PTE 99–29 were met.[2]

The conditions of section I of PTE 99–29 include the following:

(a) The exemption is not applicable if Bankers Trust Company becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTE 84–14;

(b) The exemption is not applicable if Bankers Trust Company is convicted of any crimes described in section I(g) of PTE 84–14, other than those felonies discussed in the Information;

(c) The custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. The examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor's specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption.

(d) With respect to the independent audit report described in section I(c) above: (1) Bankers Trust Company shall provide notice to the Department of any instances of the Bank's noncompliance with the written policies and procedures reviewed by the auditor within 10 business days after such noncompliance is determined by the auditor notwithstanding the fact that the examination may not have been completed as of that date. Upon request, the auditor shall provide the Department with all of the relevant

[1] On June 4, 1999, Deutsche Bank, AG acquired Bankers Trust Corporation. DBTA is indirectly wholly owned by Deutsche Bank, AG. Thus, any reference to Bankers Trust Company should be read to mean DBTCA.

[2] For additional information regarding the Information, interested persons should refer to the notice of proposed exemption at 64 FR 30360, June 7, 1999.

work papers reflecting the instances of noncompliance. The work papers should identify whether and to what extent the assets of ERISA plans were involved in the instances of noncompliance, and (2) any information relating to the Bank's noncompliance with the written policies and procedures that is required by Federal and/or State banking authorities to be reported to the State and/or Federal banking agencies shall also be reported by Bankers Trust Company to the Department within the same time frames that such information is otherwise required to be reported to those agencies.

(e) The annual examination described in section I(c) above will be provided to the Department not later than 90 days following the 12 month period to which it relates, and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, Securities and Exchange Commission or Department of Justice or other relevant regulators and any fiduciary of a plan for which Bankers Trust Company performs services.

The proposed amendment has been requested in an application filed on behalf of DBTCA. DBTCA is a New York banking corporation providing a wide range of banking, fiduciary, record keeping custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors worldwide. Deutsche Bank, AG indirectly wholly owns DBTCA.

In its application for an amendment to PTE 99–29, the applicant represents that on January 23, 2003, Deutsche Bank sold its global custody business to State Street. Deutsche Bank's sale of its custody operations to State Street included the books and records underlying the business, as well as its employees. Except as discussed below, the applicant represents that as of January 15,2004, DBTCA no longer is a custodian for ERISA covered plans.

The applicant represents that the Private Bank of Deutsche Bank will continue to serve as custodian for certain small ERISA covered plans. State Street will serve as subcustodian and perform all recordkeeping on behalf of these plans. The Private Bank is a division of DBTCA. Prior to the sale of DBTCA's custody business to State Street, the assets of the Private Bank's ERISA clients were custodied by DBTCA. That custody was transferred to State Street in 2003. In this regard, the applicant states that DBTCA has no ability to influence the operations and procedures of State Street's custodial operations. Like DBTCA, the Private Bank no longer has any direct custody functions. To the extent that it holds the title of custodian for any ERISA account, it does not have control (except as an investment manager, without possession or record ownership) over any of that plan's assets. All Private Bank plan assets are subcustodied at State Street. No securities, cash or other assets of ERISA plans are custodied at DBTCA, in the Private Bank, or otherwise.

In addition, the applicant represents that Deutsche Bank did not sell its foreign branches. The Deutsche Bank AG branches provide worldwide subcustody for other global custodians and are not subject to the five-year limited exemption granted to Bankers Trust Company in Section I of PTE 99–29. The applicant states that these branches were not involved in the felony (and indeed were unrelated to Bankers Trust Company when the felony occurred), and their relationship with other global custodians is not governed by, subject to, or otherwise related to, DBTCA and never has been. These Deutsche Bank branches are independent of, and have never been supervised or controlled by, DBTCA.

Deutsche Bank seeks an amendment of PTE 99–29 that would modify section I(c) of PTE 99–29. The applicant has requested this condition be modified to remove the annual audit requirement after the date on which DBTCA ceased to have custody of ERISA plan assets.[3] The applicant also seeks a five-year extension of the relief provided by the exemption.[4] The Department has proposed to modify the exemption such that DBTC shall be subject to the audit requirements through January 15, 2004. The Department has also proposed that the effective date of the exemption be extended to July 27, 2009.

Lastly, the applicant seeks clarification on whether the relief provided by the exemption will continue to be available now that records are maintained by State Street, and if so, whether or not State Street must maintain these records for fifteen years. As noted in the summary of facts and representations of the notice of proposed exemption for PTE 99–29, (64 FR 30360, 30364, June 7, 1999), the applicant represented that check ledgers, cancelled checks and class action records are to be maintained for 15 years. Further, all escheatment records are to be kept indefinitely.

In its application for amendment of PTE 99–29, Deutsche Bank states that it continues to maintain escheatment records indefinitely, but it no longer has access to check ledgers, cancelled checks and class actions records because they are now owned and maintained by State Street. The applicant states that it would be burdensome for State Street to maintain the records for the fifteen-year period because that time period is inconsistent with State Street's own seven-year record retention policies. The applicant requests that the record-keeping requirements be made consistent with the six-year time period found in section 107 of ERISA. The Department concurs with the applicant that as a result of Deutsche Bank's sale to State Street, the fifteen-year record retention policy described in PTE 99–29 is no longer feasible. The Department believes that the six-year period described in section 107 of ERISA would provide a sufficient time period to enable individuals to obtain the information contained in these records. In this regard, Deutsche Bank should take reasonable steps to ensure that such records are maintained by State Street for the time specified in ERISA section 107, and are available to those individuals seeking such information.[5]

Notice to Interested Persons

With respect to notification of interested persons, the applicant will distribute notice of the proposed amendment by first class mail to an independent plan fiduciary for each ERISA covered plan for which DBTCA and its subsidiaries provide or provided fiduciary services, including trustee services and/or the provision of investment advice, at the time DBTCA sold its custodial business to State Street, and each owner of an IRA account to which DBTCA and its subsidiaries provide or provided investment advisory services at the time DBTCA sold its custody business to State Street. The applicant will distribute the notice to all participants in its own ERISA pension plans, either by return receipt of electronic mail or by first class mail. All notification will be mailed or electronically mailed within three business days after publication of this proposed amendment in the **Federal Register**. The applicant will also use its best efforts to notify an

[3] DB states that it will maintain copies of these of audits for the time period required under ERISA.

[4] The Department noted in footnote 4 of PTE 99–29, "Prior to the expiration of this exemption, Bankers Trust Company may apply for an extension of the exemption."(64 FR 40625, July 27, 1999)

[5] It is the Department's understanding that copies of the audits that were conducted pursuant to PTE 99–29 will be maintained by DBTCA for the time period specified by section 107 of ERISA.

independent fiduciary for each ERISA pension plan client of DBTCA.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and/or 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and/or the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary provisions of section 404 of the Act which, among other things, requires a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(3) The availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transaction which is the subject of this exemption. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department; and

(4) Before an exemption may be granted under section 408(a) of ERISA, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its beneficiaries and protective of the rights or participants and beneficiaries of the plan.

Proposed Exemption

Based on the facts set forth in the application, and under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 99–29 as set forth below:

Section I is amended to read as follows: "Bankers Trust Company (now known as DBTCA) shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (49 FR 9494, March 13, 1994) (PTE 84–14) for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and *ending July 27, 2009,* solely because of a failure to satisfy section I(g) of PTE 84–14 as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information (the Information) entered in the U.S. District Court for the Southern District of New York, provided that:"

Section I(c) is amended to read as follows: "The custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. The examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor's specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption. *Such audit requirements shall be applicable for any year or part thereof in which DBTCA held ERISA covered plan assets in custody.*"

Section III(a) is amended to read as follows: "For purposes of this exemption, the term "Bankers Trust Company" includes Bankers Trust Company, and any entity that was affiliated with Bankers Trust Company prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries. *This term also refers to Deutsche Bank Trust Company Americas (DBTCA).*"

For a more complete statement of facts and representations supporting the Department's decision to grant PTE 99–29, refer to the proposed exemption (64 FR 30360, June 7, 1999) and the grant notice (64 FR 40623, July 27, 1999).

Signed at Washington, DC, this 31st day of January 2005.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 05–2077 Filed 2–2–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2005–01; [Exemption Application No. D–11211] et al.; Grant of Individual Exemptions; J.C.O., Inc. Retirement Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The

notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons.

No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

J.C.O., Inc. Retirement Plan and Trust (the Plan)

Located in Boulder, Colorado

[Prohibited Transaction Exemption 2005–01; Exemption Application No. D–11211]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code,[1] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the cash sale (the Sale) of certain improved real property (the Property) to the Plan by Cynthia G. Vogels, a party in interest with respect to the Plan and a 50% shareholder of J.C.O., Inc. (JCO), the Plan sponsor; and (2) the simultaneous lease (the New Lease) of the Property by the Plan to JCO.

This exemption is subject to the following conditions:

(a) The terms and conditions of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction between unrelated parties.

(b) The Sale is a one-time transaction for cash.

(c) The acquisition price that is paid by the Plan for the Property is not more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the Property that is acquired by the Plan does not exceed 20% of the Plan's assets at the time of the Sale nor throughout the duration of the New Lease.

(e) The Plan does not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) Mrs. Vogels indemnifies and holds the Plan harmless from any liability arising from the Sale, including but not limited to hazardous materials found on the Property, violation of zoning or land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(g) The New Lease is a triple-net lease under which the JCO, as lessee, pays, in addition to the base rent, all expenses incurred by the Property, including all taxes and assessments, insurance, maintenance, utilities and any other expenses.

(h) The annual rental amount under the New Lease is the higher of $40,800 or the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the New Lease is entered into by the parties.

(i) The rent payable under the New Lease is adjusted every year after the first 12 months of the New Lease by an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers for the Denver Metropolitan Area. In addition, the Property is reappraised every five years by a qualified, independent appraiser selected by the Plan's independent fiduciary and the independent fiduciary then adjusts the rental for the Property based on the appraisal. However, in no event is the rent adjusted below the rental amount paid for the preceding year.

(j) The Plan is represented at all times and for all purposes with respect to the Sale and the New Lease by a qualified, independent fiduciary.

(k) The Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the Sale and the New Lease and has determined that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

(l) The Plan's independent fiduciary monitors and enforces compliance with the terms and conditions of the New Lease and this exemption throughout the duration of the New Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 30, 2004 at 69 FR 69621.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Roy A. Herberger Defined Benefit Pension Plan (the Plan)

Located in Phoenix, Arizona

[Prohibited Transaction Exemption No. 2005–02; Application No. D–11259]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the three past in-kind contributions (the Contribution(s)) to the Plan of common stock (the Stock) of Pinnacle West Capital Corporation (PNW) by Roy A. Herberger, Jr. (the Applicant), a disqualified party with respect to the Plan,[2] provided that the following conditions are met:

(a) The transactions involved publicly traded securities, the fair market values of which were based upon published prices at the time of each Contribution;

(b) The cumulative value of the Contributions represented no more than 18% of the total assets of the Plan;

(c) The Plan has not paid any commissions, costs or other expenses in connection with the Contributions;

(d) The Applicant, who is the only person affected by the transactions, believes that the transactions were in the best interest of the Plan;

(e) The Applicant made the Contributions based on erroneous advice from his tax adviser; and

(f) The terms of the transactions between the Plan and the Applicant are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[2] Since the Applicant is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on November 8, 2004 at 69 FR 64787.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

The National Electrical Benefit Fund (the Plan)

Located in Rockville, MD

[Prohibited Transaction Exemption 2005–03; Exemption Application No. D–11165]

Exemption

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 1, 2003, to (1) the collateral assignment (the Collateral Assignment) by the Plan, of its rights and interests in the Stonegate at Bellefaire, LLC (the LLC), a real estate operating company, to M&T Real Estate, Inc. (the Senior Lender), a party in interest with respect to the Plan; and (2) the guaranty (the Guaranty) by the Plan, executed in favor of the Senior Lender, requiring the Plan to reimburse the Senior Lender for any losses the Senior Lender may incur as a result of certain affirmative "bad acts" that are committed by the Plan as a member (the Member) of the LLC.

This exemption is subject to the following conditions:

(a) The Plan's execution of the Collateral Assignment and the Guaranty was on terms no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The decisions on behalf of the Plan to invest in the LLC and consent to the terms of the Collateral Assignment and Guaranty in favor of the Senior Lender were made by fiduciaries which were independent of and unaffiliated with the Senior Lender;

(c) At the time of the transactions, the Plan had total assets that were in excess of $5 billion, and not more than 1% of the Plan's total assets was invested or will be invested in the LLC.

(d) The other Member of the LLC also executed Guaranties in favor of the Senior Lender;

(e) As a Member of the LLC, the Plan's total potential liability with respect to its investment in the real estate project (the Project), which is being developed and will be owned by the LLC, is limited to:

(1) Capital contributions made by the Plan to the LLC.

(2) Amounts funded by the Plan to the LLC.

(3) Rights and interests given to the Senior Lender under the Collateral Assignment.

(f) In the event the Plan engages in any of the specified "bad acts" that are described in the Guaranty, the Plan's total potential liability does not exceed the greater of $32.98 million or the outstanding principal amount of the loan serving as the primary funding vehicle for the Project.

EFFECTIVE DATES: This exemption will be effective as of April 1, 2003.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 8, 2004 at 69 FR 64784.

FOR FURTHER INFORMATION CONTACT: Mr. Arjumand A. Ansari of the Department, telephone (202) 693–8566. (This is not a toll-free number.)

Wheeling-Pittsburgh Corporation and Wheeling Pittsburgh Steel Corporation

Located in Wheeling, WV

[Prohibited Transaction Exemption 2005–04; Application No. L–11200]

Exemption

The restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act, shall not apply to: (1) The initial acquisition of 4,000,000 shares on August 1, 2003 (Initial Shares) of publicly traded Employer Stock through the in-kind contribution of such Initial Shares, and subsequent in-kind acquisitions of Employer Stock, by the Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan (the Plan) for the purpose of pre-funding welfare benefits provided by the Plan; and (2) the holding by the Plan of Employer Stock acquired pursuant to the contributions, provided that the following conditions are satisfied:

(a) An Independent Fiduciary will represent the Plan and its participants and beneficiaries for all purposes related to such contributions for the duration of the Plan's holding of such Employer Stock and will have sole responsibility relating to the acquisition, holding, disposition, ongoing management, and voting of Employer Stock. The Independent Fiduciary will authorize the Trustee to accept or dispose of Employer Stock only after such Independent Fiduciary determines, at the time of each transaction, that such transaction is feasible, in the interest of the Plan, and protective of the participants and beneficiaries of such Plan, subject to the terms of the Registration Rights Agreement, Stock Transfer Restriction and Voting Agreement;

(b) The appropriate fair market value of any Employer Stock contributed by WPC and WPSC to the Trust will be established by the Independent Fiduciary;

(c) The Plan or Trust incurs no fees, costs or other charges (other than those described in the Engagement Letter Agreement and the Trust Agreement) as a result of any of the transactions described herein;

(d) The terms of any transactions between the Plan and the Companies will be no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties;

(e) Employer Stock contributed in-kind to the Plan will be held in a separate account under a Trust which is qualified under section 501(c)(9) of the Code;

(f) The Committee maintains, for a period of six years from the date of the initial acquisition of shares by the Plan and from the date of any subsequent contributions of Employer Stock, any and all records necessary to enable the persons described in paragraph (g) below to determine whether the conditions of this exemption have been met, except that: (1) If the records necessary to enable the persons described in paragraph (g) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of unavailability of those records; and (2) no party in interest other than the Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (g) below;

(g)(1) Except as provided below in paragraph (g)(2) and notwithstanding any provisions of subsections 504(a)(2) and (b) of the Act, the records referred to in paragraph (f) above shall be unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department;

(B) The USWA or any duly authorized representative of the USWA; and

(C) Any participant or beneficiary of the Plan, or any duly authorized

representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B) and (C) of this paragraph (g) shall be authorized to examine the trade secrets of WPC or WPSC or commercial or financial information that is privileged or confidential.

Definitions

(a) For purposes of this exemption, the term "Independent Fiduciary" means a fiduciary with respect to the Plan who is: (1) Independent of and unrelated to WPC, WPSC or its affiliates; and (2) appointed to act on behalf of the Plan with respect to the acquisition, holding, management, and disposition of the shares. In this regard, the fiduciary will not be deemed to be independent of and unrelated to WPC and WPSC if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with WPC or WPSC; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that the Independent Fiduciary may receive compensation for acting as an Independent Fiduciary from WPC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision, and (3) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from WPC exceeds one percent (1%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year;

(c) The term "Initial Shares" means the 4,000,000 shares of common stock of WPC that were contributed to the Trust on August 1, 2003.

(d) The term "Participant" shall mean former employees of WPC, WPSC and its subsidiaries who separated from service from USWA-represented bargaining units and who are designated as beneficiaries of the newly-created WPSC Retiree Benefit Plan, as well as any dependent, surviving spouse or other beneficiary of a bargaining unit retiree who is entitled to receive benefits under the Plan.

(e) The term "Plan" refers to the Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan. The Plan is an employee welfare benefit plan established and maintained by the Committee.

(f) The term "Shares" or "Employer Stock" means shares of publicly traded common stock of WPC.

(g) The term "Trust" means a Code section 501(c)(9) trust, which is established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plan.

(h) "USWA" shall mean the United Steelworkers of America, AFL–CIO–CLC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on November 30, 2004, at 69 FR 69623.

Written Comments: The applicant (*i.e.*, WPSC) submitted written comments with respect to the notice of the proposed exemption (the Proposal). The comments are summarized below.

The applicant requests that the third transaction described in the first paragraph in the proposed Exemption, which refers to "the extension of credit between Wheeling Pittsburgh Corporation (WPC), Wheeling-Pittsburgh Steel Corporation (WPSC) and the Plan, which will occur in conjunction with WPC's and WPSC's contributions of Employer Stock and cash for the benefit of the retirees," be omitted due to the absence of an extension of credit in connection with the contributions of Employer Stock. The Department acknowledges the applicant's comment and has revised the grant accordingly.

The applicant states that information concerning the Independent Fiduciary managing Employer Stock that is contributed to the Plan, subject to the provisions of the Independent Fiduciary Engagement Agreement, the Stock Agreement and the Registration Rights Agreement was not included in Item 6 of the Summary of Facts and Representations contained in the proposal (the Summary) in describing the responsibilities of the Independent Fiduciary. The Department acknowledges the applicant's clarifications to the information contained in the Summary.

In addition, the applicant states that the fifth paragraph in Item 6 of the Summary indicates that "the Independent Fiduciary sold 42,000 shares of Employer Stock from March 25, 2004 to April 20, 2004" and should have indicated that the Independent Fiduciary actually sold 42,400 shares during this period. The Department acknowledges the applicant's clarifications to the information contained in the Summary.

The Department received four written inquiries and close to one hundred telephone calls concerning the Proposal from interested persons. All of the telephone calls and written inquiries requested additional information regarding the transactions and the possible affect on benefits payable to the appropriate Plan participants. The Department responded to each inquiry by telephone and attempted to address the issues that were raised. None of the additional comments made to the Department offered specific suggestions or reasons for changes to the proposal.

The Department received no other comments. Accordingly, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski of the Department, telephone (202) 693–8545. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of January, 2005.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 05–2078 Filed 2–2–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemption Application No. L–11245; The North Texas Electrical Joint Apprenticeship and Training Trust Fund (the Plan)

AGENCY: Employee Benefits Security Administration, Department of Labor (the Department).

ACTION: Notice of proposed exemption.

On November 8, 2004, the Department published in the **Federal Register** (69 FR 64788) a notice of a proposed exemption (the Notice) which states that, [i]f the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the sale (the Sale(s)) of (1) a 1.112 acres of land (Parcel 1) to the North Texas Chapter, National Electrical Contractors Association, a party in interest to the Plan; and (2) 5.383 acres of land (Parcel 2) to Local Union #20, International Brotherhood of Electrical Workers, a party in interest to the Plan, conditioned upon the satisfaction of the following requirements:

(a) The Sales are one-time transactions for cash;

(b) The Plan does not pay any commissions, costs or other expenses in connection with the Sale of Parcel 1 and Parcel 2 (collectively the Parcels); and

(c) The Plan will receive an amount equal to the greater of: (i) $145,000 or the current fair market value of Parcel 1 as established by an independent, qualified, appraiser and updated at the time of the Sale; and (ii) $655,000; or the current fair market value of Parcel 2 as established by an independent, qualified, appraiser and updated at the time of the Sale; and

(d) The terms of the Sales will be no less favorable to the Plan than terms it would have received under similar circumstances in an arm's length negotiations with an unrelated party.

On page 64788 of the Notice, the operative language provides relief from the restrictions of section 406(a) of the Act. The Notice should have provided relief from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act. Accordingly, the Department hereby corrects the notice of proposed exemption as set forth below. The proposed exemption is amended to read:

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (2) of the Act shall not apply to the sale (the Sale(s)) of (1) a 1.112 acre of land (Parcel 1) to the North Texas Chapter, National Electrical Contractors Association (NECA), a party in interest to the Plan; and (2) 5.383 acres of land to Local Union #20, International Brotherhood of Electrical Workers (IBEW), a party in interest to the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

Signed at Washington, DC, this 31st day of January, 2005.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 05–2076 Filed 2–2–05; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 7, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Central Liquidity Facility Repayment Agreement, Regular Member.

OMB Number: 3133–0061.

Form Number: CLF–8703.

Type of Review: Extension of a currently approved collection.

Description: The form is used by CLF regular members borrowing from the CLF.

Respondents: Credit unions which are CLF regular members who borrow from the CLF.

Estimated No. of Respondents/Record keepers: 40.

Estimated Burden Hours Per Response: 2.875 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 115 hours.

Estimated Total Annual Cost: 0.

By the National Credit Union Administration Board on January 27, 2005.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–2007 Filed 2–2–05; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 7, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a

copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Central Liquidity Facility Regular Member Membership Application.

OMB Number: 3133–0063.

Form Number: CLF–8702.

Type of Review: Extension of a currently approved collection.

Description: This is a one-time form used to request membership in the CLF.

Respondents: Credit unions seeking membership in the CLF.

Estimated No. of Respondents/Record keepers: 25.

Estimated Burden Hours Per Response: .5 hour.

Frequency of Response: Other. As credit unions request membership in the CLF.

Estimated Total Annual Burden Hours: 12.5 hours.

Estimated Total Annual Cost: 0.

By the National Credit Union Administration Board on January 27, 2005.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–2008 Filed 2–2–05; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 7, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Forms and Instructions for Central Liquidity Facility Loans.

OMB Number: 3133–0064.

Form Number: NCUA—7000, 7001, 7002, 7003 and 7004.

Type of Review: Extension of a currently approved collection.

Description: Forms used by each borrower from the CLF.

Respondents: Credit unions that borrow from the CLF.

Estimated No. of Respondents/Record keepers: 25.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Total Annual Cost: 0.

By the National Credit Union Administration Board on January 27, 2005.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–2009 Filed 2–2–05; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 7, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Part 715, NCUA Rules and Regulations (Existing Parts 701.12 and 701.13).

OMB Number: 3133–0059.

Form Number: NA.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: The rule specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles that apply to certain audits, and the accounting principles that must be followed in reports filed with the NCUA Board.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 12,000.

Estimated Burden Hours Per Response: 5.75 hours.

Frequency of Response: Reporting and annually.

Estimated Total Annual Burden Hours: 100,906 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on January 27, 2005.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–2010 Filed 2–2–05; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations Title 45, Part 670).

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale, Environmental Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 21, 1999, the National Science Foundation issued a five-year permit (ACA #2000–001) to Dr. Steven D. Emslie after posting a notice in the August 17, 1999 **Federal Register**. Public comments were not received. A request to modify the permit was posted in the **Federal Register** on December 20, 2004. No public comments were received. The modification was issued by the Foundation on January 19, 2005.

Polly A. Penhale,

Environmental Officer.

[FR Doc. 05–2011 Filed 2–2–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–19882, License No. 52–21175–01, EA–04–118]

Baxter Health Care, Aibonito, PR; Confirmatory Order Modifying License (Effective Immediately)

Baxter Health Care Corporation (Baxter or Licensee) is the holder of NRC License No. 52–21175–01 (License) which authorizes the Licensee to operate an irradiator at its facility in Aibonito, Puerto Rico.

On October 25, 2004, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the amount of $44,400 to Baxter Healthcare Corporation (Baxter) based on six violations of NRC requirements. The circumstances associated with these violations were reviewed by the NRC during an Augmented Inspection Team (AIT) inspection conducted between April 22, 2004, and June 1, 2004, after a Baxter representative informed the NRC on April 21, 2004, that an event had occurred at the facility. The event involved two individuals (an irradiator operator and assistant) bypassing safety interlocks and entering the irradiator at a time when an irradiator source rack (containing 2,000,000 curies of cobalt-60) was stuck in an unshielded position.

The three most significant violations cited by the NRC in its October 25, 2004 Notice were described in Section I. The first violation cited in Section I of the Notice involved the failure to adhere to emergency and abnormal event procedures when the safety interlocks were bypassed even though the irradiator source rack fault indicator was illuminated and the source travel alarm had sounded for an extended period. This occurred on at least three occasions, including when the source rack was stuck in the unshielded position on April 21, 2004. This created the potential for a lethal exposure to radiation for the two individuals who entered the area while the sources were exposed, since, as previously indicated, the individuals passed through an area with a radiation level at least as high as 1600 rads/hour, and were planning to enter an area with much higher radiation levels (as high as 100,000 rads/hour in the irradiator cell). By bypassing the safety interlocks, a system designed to prevent a serious safety event was rendered inoperable, which created the potential for significant injury and loss of life. Therefore, in the Notice, the NRC classified this violation at Severity Level II and proposed a civil penalty in the amount of $28,800 ($9,600 for each of the minimum three occasions that the violation occurred).

The second violation cited set forth in Section I involved the failure to perform an adequate survey prior to the two individuals entering the irradiator on April 21, 2004. Prior to the entry, the operators did not adequately check the irradiator cell radiation monitor, did not adequately check the radiation levels outside the irradiator facility, and did not adequately do other such surveys as were reasonable to determine that a source rack was stuck in the unshielded position and had not returned to the fully shielded position. The NRC also classified this violation at Severity Level II and proposed a $9,600 civil penalty for the violation.

The third violation cited by the NRC in Section I of the Notice involved the failure by the irradiator operator to supply his assistant an individual radiation monitoring device when the two individuals entered the irradiator on April 21, 2004, while a source rack was stuck in the unshielded position. Based on the OI investigation, the NRC concluded that this violation was willful. The NRC classified this violation at Severity Level III and proposed a $6,000 civil penalty.

The letter transmitting the Notice also described the Licensee's corrective actions, which included, but were not limited to: (1) Revision to procedures for responding to emergency conditions and performing necessary surveys; (2) plans to annually review the standard operating procedures for adequacy; (3) upgrade of the training program and retraining of staff on revised procedures, survey techniques, and dosimetry use; and (4) increased management oversight of the irradiator program, including: (a) Monthly reviews of the irradiator department by the Plant General Manager, Manufacturing Director, Radiation Safety Officer (RSO), and the assistant RSO (ARSO); (b) annual internal audits of the irradiator by the Environmental Health and Safety Manager and RSO; and (c) additional periodic audits of the irradiator by the corporate environmental health and safety group as well as by an external consultant.

The other three violations cited in the Notice were described in Section II and the NRC classified those violations at Severity Level IV.

In response to the October 25, 2004 Notice, Baxter requested use of the NRC Alternate Dispute Resolution Process (ADR) to resolve differences it had with the NRC concerning the Notice. ADR is a process in which a neutral mediator with no decision-making authority assists the NRC and Baxter in reaching an agreement on resolving any differences regarding the enforcement action. An ADR session was held between Baxter and NRC in Philadelphia, Pennsylvania on December 13, 2004, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. During that ADR session, a settlement agreement was reached. The elements of the settlement agreement, which were documented in a letter from Mr. Peter Etienne, Senior Counsel, Baxter, to the NRC on December 17, 2004, consisted of the following:

A. Baxter agrees to pay a civil penalty of $31,200.00 for Violations I.A, I.B and I.C. The NRC will characterize these violations as a Severity Level II problem.

B. Baxter and the NRC agree to disagree on the willful characterization of Violation I.C.

C. NRC agrees to treat Violations II.A, II.B, and II.C as non-cited violations.

D. Baxter agrees to implement the corrective action as documented in Baxter's letter dated August 23, 2004, except that with respect to item 1(c) in that letter, ("Additional External Review by Outside Consultant"), that item is replaced by the terms of the December 13, 2004, settlement. Specifically, Baxter agrees to provide for reviews of irradiator operations to be conducted by a qualified consultant, with such review to include a review of operations, maintenance, radiation safety and the RSO and ARSO functions. Review results will be documented and made available to NRC during inspections conducted by the NRC. Such reviews to be conducted as noted below.

E. A review by the qualified external consultant will be conducted in 2005 of the RSO and ARSO function to supplement the reviews done in 2004.

F. In 2007, a qualified external consultant will conduct a full review as listed in Item D.

G. In 2007 after the full review, Baxter will discuss with NRC whether Baxter will need to continue to use a qualified external consultant. It is anticipated that the last external consultant review will be completed in 2007. In no event shall such review extend beyond one additional review in 2009 in the context of this Agreement.

H. Baxter will submit to the NRC a letter within two weeks (by December 27, 2004) which documents the Agreement. (Met by Baxter's December 17, 2004 letter).

I. Upon issuance of a Confirmatory Order by the NRC, confirming the Agreement reached by the parties on December 13, Baxter will pay the Civil Penalty in the amount of $31,200.00 within thirty days of the date of issuance of that Confirmatory Order.

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the licensee commitments as outlined in this Order.

I find that the licensee's commitments as set forth in Section III above are acceptable and conclude that with these commitments, the public health and safety are reasonably assured. However, in view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and the licensee's consent, this Order is immediately effective upon issuance. The licensee is required to provide the NRC with a letter summarizing all of its actions, up to and including, its last external consultant review that is to be completed in 2007.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, *It is hereby ordered*, effective immediately that:

A. Baxter pay a civil penalty of $31,200.00 for Violations I.A, I.B and I.C. set forth in the NRC October 25, 2004 Notice. (The NRC will characterize these violations as a Severity Level II problem. Also, Baxter and the NRC agree to disagree on the willful characterization of Violation I.C, and the NRC agrees to treat Violations II.A, II.B, and II.C as non-cited violations).

B. Baxter implement the corrective actions a documented in its August 23, 2004, letter except that with respect to item 1(c) in that letter ("Additional External Review by Outside Consultant"), that item is replaced by the terms of the December 13, 2004, settlement. Specifically, Baxter will provide for reviews of irradiator operations to be conducted by a qualified consultant with such review to include a review of operations, maintenance, radiation safety and the RSO and ARSO functions. Review results will be documented and made available to NRC during inspections conducted by NRC. Such reviews to be conducted as noted below.

1. A review by the qualified external consultant will be conducted in 2005 of the RSO and ARSO function to supplement the reviews done in 2004.

2. In 2007, a qualified external consultant will conduct a full review as listed in Item B.

3. In 2007 after the full review, Baxter will discuss with NRC whether Baxter will need to continue to use a qualified external consultant, although it is anticipated that the last external consultant review will be completed in 2007, and in no event, shall such review extend beyond one additional review in 2009 in the context of the Agreement.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by the licensee of good cause.

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to Baxter. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel by means of facsimile transmission to (301) 415–3725 or e-mail to *OGCMailCenter@nrc.gov*. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained. An answer or a request for a hearing shall not stay the effectiveness date of this order.

Dated this 26th day of January 2005.

For the Nuclear Regulatory Commission.

Frank Congel, Director,

Office of Enforcement.

[FR Doc. 05–2026 Filed 2–2–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Boston Restaurant Associates, Inc. To Withdraw Its Common Stock, $.01 par value, From Listing and Registration on the Boston Stock Exchange, Inc.; File No. 1–13320

January 28, 2005.

On January 11, 2005, Boston Restaurant Associates, 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) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

On December 23, 2004, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Issuer's Security from listing and registration on the BSE. The Issuer stated: (1) That on December 20, 2004, the BSE notified the Issuer that the BSE would suspend trading of the Security at the close of business that same day. The suspension was the result of a failure of the Issuer to maintain a minimum of $500,000 of stockholder's equity as required by the BSE. (2) After careful consideration the Issuer decided to request a voluntary delisting of the Security from the BSE. The Issuer stated that the Security currently trades on the OTC Bulletin Board.

The Issuer stated in its application that it has complied with BSE

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

procedures for delisting by complying with all applicable laws in effect in the State of Delaware, the state in which it is incorporated, and by filing the required documents governing the withdrawal of securities from listing and registration on the BSE.

The Issuer's application relates solely to withdrawal of the Security from listing on the 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 February 22, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the 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 1–13320 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–13320. 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.

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–417 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of The Charles Schwab Corporation To Withdraw Its Common Stock, $.01 par value, From Listing and Registration on the Pacific Exchange, Inc.; File No. 1–9700

January 28, 2005.

On January 12, 2005, The Charles Schwab Corporation, a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors ("Board") of the Issuer unanimously approved resolutions on January 20, 2004 to withdraw the Issuer's Security from listing on the PCX. The Issuer stated the following reasons factored into the Board's decision to withdraw the Security from listing on the PCX: (1) The Security is currently traded on the New York Stock Exchange, Inc. ("NYSE") and The Nasdaq Stock Market; and (2) the low volume of trading in the Security on the PCX does not justify the expense and administrative time associated with remaining listed on the PCX.

The Issuer stated that it has complied with PCX Rule 5.4(b) by complying with all applicable laws in effect in Delaware, in which it is incorporated, and by providing the PCX with the required documents governing the withdrawal of securities from listing and registration on the PCX.

The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall not affect its continued listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before February 22, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–9700 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–9700. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–416 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Regal-Beloit Corporation To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–07283

January 28, 2005.

On January 19, 2005, Regal-Beloit Corporation, a Wisconsin corporation ("Issuer"), filed an application with the Securities and Exchange Commission

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On December 15, 2004, the Board of Directors ("Board") of the Issuer approved a resolution, pursuant to an action by unanimous written consent, to withdraw the Issuer's Security from listing on the Amex and to list the Security on the New York Stock Exchange, Inc. ("NYSE"). The Board stated that it determined to withdraw the Security from the Amex and list the Security on the NYSE for the following reasons: (i) Due to recent acquisitions, the Issuer has grown significantly worldwide, achieving recognition as the industry leader for its products; and (ii) it is desirable and for the benefit of the Issuer to list its Security on the NYSE, which is an internationally recognized stock exchange. The Security commenced trading on the NYSE on January 21, 2005.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in Wisconsin, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex, and shall not affect its continued listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before February 22, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the 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

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–07283 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–07283. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–410 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26742]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 28, 2005.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January, 2005. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 23, 2005, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

Golden Oak Family of Funds [File No. 811–21118]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 29, 2004, applicant transferred its assets to corresponding series of Federated Municipal Securities Income Trust and Goldman Sachs Trust, based on net asset value. Expenses of $71,914 incurred in connection with the reorganization were paid by CB Capital Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on January 6, 2005.

Applicant's Address: Federated Investors Tower, 1001 Liberty Ave., Pittsburgh, PA 15222–3779.

Seix Funds, Inc. [File No. 811–8323]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 2004, applicant transferred its assets to corresponding series of STI Classic Funds, based on net asset value. Expenses of $222,068 incurred in connection with the reorganization were paid by Seix Investment Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on December 30, 2004, and amended on January 20, 2005.

Applicant's Address: 300 Tice Blvd., Woodcliff Lake, NJ 07675–7633.

MBIA Capital/Claymore Managed Duration Investment Grade New York Municipal Fund [File No. 811–21360];

MBIA Capital/Claymore Managed Duration New Jersey Municipal Trust [File No. 811–21362];

MBIA Capital/Claymore Managed Duration Investment Grade California Municipal Fund [File No. 811–21363]

Summary: Each applicant, a closed-end management company, seeks an order declaring that it has ceased to be an investment company. The applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

Filing Dates: The applications were filed on November 12, 2004, and amended on January 14, 2005.

Applicants' Address: 113 King St., Armonk, NY 10504.

Minnesota Municipal Term Trust Inc. II [File No. 811–6517]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 10, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Prior to the liquidation date, applicant's preferred stock was redeemed at its liquidation preference, plus accumulated but unpaid dividends through the redemption date. Expenses of $5,392 incurred in connection with the liquidation were paid by applicant and U.S. Bancorp Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 29, 2004.

Applicant's Address: U.S. Bancorp Asset Management, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

Amstar Investment Trust [File No. 811–9405]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 30, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $2,743 incurred in connection with the liquidation were paid by Amstar Investment Management Company, LLC, applicant's investment adviser.

Filing Date: The application was filed on January 5, 2005.

Applicant's Address: 14 Penn Plaza, 225 West 34th St., Suite 718, New York, NY 10122.

First American Insurance Portfolios, Inc. [File No. 811–9765]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 3, 2004, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $34,274 incurred in connection with the liquidation were paid by U.S. Bancorp Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 29, 2004.

Applicant's Address: U.S. Bancorp Asset Management, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

The Scott James Fund, Inc. [File No. 811–9809]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has 39 shareholders and presently is not making a public offering and does not propose to make a public offering. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on June 18, 2004 and amended on September 27, 2004, December 1, 2004, and January 11, 2005.

Applicant's Address: 6700 Arlington Blvd., Falls Church, VA 22042.

Credit Suisse Select Funds [File No. 811–9531]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 2002, applicant's last remaining series transferred its assets to Credit Suisse Global Technology Fund Inc., based on net asset value. All expenses incurred in connection with the reorganization were born by Credit Suisse Asset Management, LLC, applicant's investment adviser, and/or its affiliates.

Filing Dates: The application was filed on April 29, 2003, and amended on November 25, 2003.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

CML/OFFITBANK Separate Account [File No. 811–7361]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, Applicant had no shareholders or contractholders.

Filing Dates: The application was filed on December 8, 2003 and amended and restated on November 16, 2004.

Applicant's Address: 1295 State Street, Springfield, Massachusetts 01111–001

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–403 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 7, 2005:

A Closed Meeting will be held on Wednesday, February 9, 2005 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, February 9, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature;

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) 942–7070.

Dated: February 1, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2155 Filed 2–1–05; 11:20 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51093; File No. SR–FICC–2004–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Structure of the Government Securities Division of the Fixed Income Clearing Corporation

January 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 30, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

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

The proposed rule change consists of amendments to the fee structure of the Government Securities Division ("GSD") of FICC to clarify and update certain provisions of the fee structure for GSD's services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

The purpose of the proposed rule change is to amend the fee structure of the GSD to clarify and/or update certain provisions.

(1) Trade Submission

The proposed change deletes references to outdated submission modes such as magnetic tape output and paper output and makes clear that there is a $0.50 charge for submitting trade data to the GSD. The proposed change also clarifies that a trade submission that is rejected because it failed to pass the necessary edit checks (other than a valid contra side) will not be charged the submission fee but will be charged a rejection fee.

(2) Surcharge for Trade Submission Method

The proposed change clarifies that the surcharges that are imposed for failure to use the interactive submission method are based on submission method as opposed to whether the trade is submitted to the GSD within one hour of execution.

(3) Demand and Locked-In Trade Submissions

The proposed change makes clear that the fee for processing and reporting demand and locked-in trades is applied per $50 million increment, which is the way in which trades other than GCF Repo trades are required to be submitted.

(4) Trade Advisories

The proposed change deletes a provision from the fee structure regarding charges for advisories under certain circumstances as that fee is no longer being applied.

(5) Communication Connections

The communication fees currently listed in the fee structure have become outmoded, and FICC is removing them from the fee structure. In the near future, a new communications framework will be implemented which will include revised fees. FICC will file with the Commission a new communication fee arrangement as more details on such implementation become available.

(6) Auction Takedown Process Fees

The proposed change restructures the provisions on the auction takedown process so that they are all contained within one section.

(7) Repo Collateral Substitution Fees

Members are currently billed the repo collateral substitution fee by being charged a submission fee ($.50) plus a modification fee ($.25). The proposed change specifies more clearly that the fee for repo collateral substitutions is $.75.

The proposed changes will become effective on January 1, 2005.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to FICC because the proposed rule change provides for the equitable allocation of dues, fees, and other charges among FICC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an 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

Written comments relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such 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–FICC–2004–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2004–21. 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, 450 Fifth Street, NW.,

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *www.ficc.com*. 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–FICC–2004–24 and should be submitted on or before February 24.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–408 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51082; File No. SR–NASD–2004–042]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Foreign Hearing Locations

January 26, 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 March 9, 2004, National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("Dispute Resolution"), 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 Dispute Resolution. NASD amended the proposal on September 29, 2004,[3] and November 23, 2004.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 10315 to permit arbitrations to occur in a foreign hearing location and to amend IM–10104 to allow the Director of Arbitration to authorize a higher or additional honorarium for the use of a foreign hearing location. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM–10104. Arbitrators' Honorarium

All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.

The honorarium shall be $200 for each hearing session and $75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be $125.

The honorarium for travel to a canceled hearing session shall be $50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of $100.

The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

* * * * *

10315. [Designation of Time and Place] *Determination of Hearing* Location

(a) Designation of Time and Place of Hearing

The Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing, and shall give notice of the time and place at least 15 business days prior to the date fixed for the first meeting by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give notice as the arbitrators may determine. Attendance at a meeting waives notice thereof.

(b) Foreign Hearing Location

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met NASD background qualifications for arbitrators;

(B) received training on NASD arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge shall be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rules 10205 and 10332.

* * * * *

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

(a) Purpose

Background

Dispute Resolution maintains a roster of qualified neutrals (*i.e.*, arbitrators and mediators) in 51 cities in the United States and Puerto Rico. In accordance with NASD Rule 10315, the Director of Arbitration sets the hearing location for NASD arbitration cases. For cases involving public customers, the Director generally designates the hearing location that is closest to the public customer's residence at the time of the events in dispute. However, for claimants who reside outside of the United States, the Director sets the hearing in the NASD hearing location

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Mignon McLemore, Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2004 ("Amendment No. 1"). Amendment No. 1 amended the proposed rule language, among other things, to clarify that the Director of Arbitration may authorize a higher or additional honorarium only for the use of a foreign hearing location.

[4] Form 19b–4 dated November 23, 2004 ("Amendment No. 2"). Amendment No. 2 amended the proposed rule language, among other things, to add qualifications for foreign arbitrators to NASD Rule 10315(b)(1).

that is most logical for the case. Generally, in instances where the claimant resides outside the United States, the Director will consider a number of factors in determining a hearing location, including the preferences of the parties, the location of counsel or witnesses, and the availability of transportation routes to cities in the United States.

NASD's Proposal

To accommodate parties to arbitrations abroad, NASD is proposing to amend NASD Rule 10315 to permit arbitrations to occur in a foreign hearing location. NASD is also proposing to amend IM–10104 to allow the Director to authorize a higher or additional honorarium for the use of a foreign hearing location. Under the proposal, the foreign hearing location process will be voluntary.[5] Parties seeking arbitration will still file with NASD the claim information, submission agreements, and other related documents currently required by NASD rules. Once Dispute Resolution has determined that an arbitration case can be handled using a foreign hearing location, Dispute Resolution will inform claimants residing in the United Kingdom or other European countries about the availability and the additional costs of the appropriate foreign hearing location. If the claimant wishes to use a foreign hearing location, Dispute Resolution will seek the agreement of the respondents.

Under the proposal, all foreign arbitrators selected by NASD to conduct arbitrations in foreign hearing locations must satisfy certain requirements. First, they must meet NASD background qualifications for arbitrators.[6] Second, they must receive training on NASD arbitration rules and procedures.[7] Finally, they must satisfy at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.[8]

The first foreign hearing location for NASD arbitrations will be in London. Dispute Resolution has formed a relationship with the Chartered Institute of Arbitrators ("CIArb"), which is based in London and maintains a worldwide roster of neutrals, specializing in, among other areas, providing dispute resolution services for banking, finance, business, commercial, and international issues. NASD believes that a partnership between CIArb and NASD will provide NASD's international constituents with access to a local roster of experienced neutrals[9] as well as the convenience and cost efficiency of conducting hearing sessions within a reasonable distance from their place of business or residence.

Furthermore, under the proposal, as a condition of using a foreign hearing location, the parties must agree to accept the special Foreign Hearing Location Surcharge to cover the additional daily cost for the foreign arbitrators' service in that location.[10] While this surcharge will initially be apportioned equally among the parties, unless they agree otherwise, the foreign arbitrators will have the authority to apportion the surcharge as provided for in NASD Rules 10205 and 10332.[11]

Finally, the NASD Dispute Resolution Business Development staff, with the cooperation of the administrative staff of the groups providing the foreign arbitrators, will administer all cases designated for hearing in a foreign location.[12] The Code, with the addition of the Foreign Hearing Location Surcharge, will govern all case administration.

Conclusion

The proposed rule change will provide those parties residing in foreign locations with the option of holding their arbitration hearings closer to home, using local arbitrators, and saving the expenses of traveling to the U.S. to resolve their disputes. The voluntary aspect of the proposed rule change will allow these parties to decide in each matter whether a foreign hearing location or U.S. hearing location is preferable. NASD believes that the expenses saved by the parties will offset the Foreign Hearing Location Surcharge.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest because it will expand access to its arbitration forum internationally while maintaining the same protections that apply to the process in the United States.

(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, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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:

[5] NASD Rule 10315(b)(1).

[6] NASD Rule 10315(b)(1)(A).

[7] NASD Rule 10315(b)(1)(B).

[8] NASD Rule 10315(b)(1)(C).

[9] CIArb's neutrals are required to complete a rigorous training program and to pass testing and interview requirements before being qualified for appointment to cases. The CIArb's training requirements exceed any standards currently employed by a United States forum. CIArb's neutrals must meet NASD's background qualification requirements. NASD, upon approval of its National Arbitration and Mediation Committee, agreed to accept the CIArb training and testing requirements for arbitrators as a substitute for NASD training and testing. In addition, NASD conducted training for CIArb neutrals on NASD arbitration rules and procedures.

[10] NASD Rule 10315(b)(2). CIArb neutrals have agreed to serve in NASD cases at daily rates that are lower than their normal charges. However, those reduced rates are still significantly higher than the arbitrator honorarium rates paid by NASD. To cover the additional cost of the foreign neutral fee, NASD will assess the daily Foreign Hearing Location Surcharge for parties agreeing to use the London hearing location. This surcharge will be used solely to pay additional honorarium to the foreign neutrals rather than to cover any other NASD expenses. The amount of the surcharge may vary depending on factors such as the daily rates for neutrals in a foreign hearing location and the currency exchange rates.

[11] NASD Rule 10315(b)(2). NASD Rule 10205 (Schedule of Fees for Industry and Clearing Controversies) and NASD Rule 10332 (Schedule of Fees for Customer Disputes) provide that arbitrators, in their awards, shall determine who shall pay forum fees.

[12] NASD will add information about CIArb neutrals to the Neutral List Selection System so that the background disclosures provided to parties and the arbitrator selection process will be the same as in other hearing locations.

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–2004–042.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NASD–2004–042. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2004–042 and should be submitted on or before February 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–402 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51097; File No. SR–NASD–2005–007]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Proposal to Adopt a New IM–10308 on Mediators Serving as Arbitrators

January 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III, below, which NASD has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to adopt a new Interpretive Material ("IM")–10308 to clarify that (1) fees for service as a mediator are not included in determining whether an attorney, accountant, or other professional derives 10% of his or her annual revenue from industry-related parties; and (2) service as a mediator is not included in determining whether an attorney, accountant, or other professional devotes 20% or more of his or her professional work to securities industry clients. The text of the proposed rule change is reproduced below. Proposed new language is in *italics*.

* * * * *

IM–10308. Arbitrators Who Also Serve as Mediators[3]

Mediation services performed by mediators who are also arbitrators shall not be included in the definition of "professional work" for purposes of Rule 10308(a)(4)(C), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.

Mediation fees received by mediators who are also arbitrators shall not be included in the definition of "revenue" for purposes of Rule 10308(a)(5)(A)(iv), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.

Arbitrators who also serve as mediators shall disclose that fact on their arbitrator disclosure forms.

* * * * *

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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 Regulation 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

Several rule changes relating to arbitrator classification were approved by the SEC[4] on April 16, 2004 and implemented by NASD on July 19, 2004. These changes amended the definitions of "public" and "non-public" arbitrators (non-public arbitrators have some current or recent connection with the securities industry, but do not necessarily work in the industry). In the course of implementing the classification rule, NASD surveyed its entire roster of arbitrators, asking questions that tracked the new definitions. In light of information contained in their responses, some arbitrators were reclassified from public to non-public or from non-public to public, and some arbitrators were dropped from the roster for various reasons.

One new part of the rule provided that arbitrators who were otherwise qualified as public could not continue to serve as public arbitrators if their firms derived more than 10% of their revenue from industry parties. Specifically, Rule 10308(a)(5)(A)(iv) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This IM will be renumbered following Commission approval of the pending revisions of the Customer and Industry Codes, SR–NASD–2003–158, filed on October 15, 2003, and SR–NASD–2004–011, filed on January 20, 2004.

[4] *See* Exchange Act Release No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (SR–NASD–2003–095).

the Code of Arbitration Procedure was amended to read as follows:

> The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and * * * (iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A) * * *.

Some arbitrators who also serve as mediators were of the opinion that the rule change encompassed income in the form of mediation fees paid by industry parties such that these individuals would no longer qualify as public arbitrators under the new rule.

The NASD Dispute Resolution Board determined that the rule could be construed broadly enough to cover revenue derived from serving as a mediator, although this was clearly not the intent of the recent rule changes, and unanimously voted to issue a clarification in an IM that would be printed in the Code following Rule 10308.

The IM also would make clear that mediation services performed by mediators who are also arbitrators is not to be included in the definition of "professional work" for purposes of the 20% test either, so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.

In considering this matter, the NASD Dispute Resolution Board also determined that parties may wish to know that an arbitrator on their list also serves as a mediator and may be familiar with the industry parties or their counsel. NASD staff will add this information to the disclosure forms of dual arbitrators/mediators.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that any potential conflict is best addressed by ensuring that arbitrators who are mediators disclose this fact in the arbitrator disclosure history. NASD will prepare materials to inform arbitrators of the need to make this disclosure.

[5] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance 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.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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–NASD–2005–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–007. 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–2005–007 and should be submitted on or before February 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–407 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51085; File No. SR–NYSE–2005–10]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Voluntary Supplemental Procedures for Selecting Arbitrators

January 27, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder, notice is hereby given that on January 18, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension until July 31, 2005, of the Voluntary Supplemental Procedures for Selecting Arbitrators ("Supplemental Procedures").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to extend until July 31, 2005 the Supplemental Procedures, which were approved by the Commission, most recently in SR–NYSE–2004–28,[5] for a six-month period ending January 31, 2005.

The Exchange currently has several methods by which arbitrators are assigned to cases, including the traditional method under NYSE Rule 607, pursuant to which Exchange staff appoints arbitrators to cases (the "Traditional Method"). On August 1, 2000, the Exchange implemented a two-year pilot program to allow parties, on a voluntary basis, to select arbitrators under two alternative methods (in addition to the Traditional Method).[6] Upon expiration of the two-year pilot, the Exchange renewed the pilot for an additional two years, which expired on July 31, 2004,[7] and then again for an additional six months through January 31, 2005.[8]

Under the Supplemental Procedures, the first alternative to the Traditional Method is the Random List Selection method by which the parties are provided randomly generated lists of public-classified and securities-classified arbitrators. The parties have ten days to strike and rank the names on the lists. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case. If a panel cannot be generated from the first list, a second list is generated, with three potential arbitrators for each vacancy, and one peremptory challenge available to each party for each vacancy. If vacancies remain after the second list has been processed, arbitrators are then randomly assigned to serve, subject only to challenges for cause.

The second alternative to the Traditional Method is entitled Enhanced List Selection, in which six public-classified and three securities-classified arbitrators are selected, based on their qualifications and expertise, by Exchange staff. The lists are then sent to the parties. The parties have a limited number of strikes to use and are required to rank the arbitrators not stricken. Based on mutual ranking of the lists, the highest-ranking arbitrators are invited to serve on the case.

Finally, the Supplemental Procedures provide that the Exchange will accommodate the use of any reasonable alternative method of selecting arbitrators that the parties decide upon, provided that the parties agree. Absent agreement as to the use of Random List Selection, Enhanced List Selection, or any other reasonable alternative method, the Traditional Method is used.

The Exchange, pursuant to a separate filing,[9] is proposing amendments to NYSE Rule 607 which would, in effect, make permanent a variation of the pilot program described herein. Pending Commission consideration of those amendments, the Exchange proposes to extend the pilot period for the Supplemental Procedures for an additional six months, until July 31, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[10] of the Act in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder. 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 Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[13] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[14] In this regard, the

[5] *See* Exchange Act Release No. 49915 (June 25, 2004), 69 FR 39993 (July 1, 2004).

[6] *See* Exchange Act Release No. 43214 (August 28, 2000), 65 FR 53247 (September 1, 2000) (SR–NYSE–00–34).

[7] *See* Exchange Act Release No. 46372. *See also* Exchange Act Release No. 47929 (May 27, 2003), 68 FR 32791 (June 2, 2003) (SR–NYSE–2003–15).

[8] *See* Exchange Act Release No. 49915, *supra* note 5.

[9] *See* SR–NYSE–2005–02, filed with the Commission on January 4, 2005.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has

Continued

Commission notes that the proposal is the extension of a pilot program that has been in effect at the Exchange since August 2000. For these reasons, the Commission designates the proposed rule change as effective and operative immediately. Nothing in the current notice should be interpreted as suggesting the Commission is predisposed to approving the proposed variation of the pilot program.

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–NYSE–2005–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2005–10. 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–NYSE–2005–10 and should be submitted on or before March 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–405 Filed 2–2–05; 8:45 am]

BILLING CODE 8010–01–P

considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 14, 2005

The following Agreements Were Filed With the Department of Transportation Under the Provisions of 49 U.S.C. 412 and 414. Answers May Be Filed Within 21 Days After the Filing of the Application

Docket Number: OST–2005–20074.
Date Filed: January 10, 2005.
Parties: Members of the International Air Transport Association.
Subject:

PTC3 0798 dated 21 December 2004
TC3 Areawide Resolutions r1–r8
PTC3 0799 dated 21 December 2004
TC3 Within South Asian Subcontinent Resolutions r9–r18
PTC3 0800 dated 21 December 2004
TC3 Within South East Asia except between Malaysia and Guam Resolutions r19–r32
PTC3 0801 dated 21 December 2004
TC3 Within South East Asia between Malaysia and Guam Resolutions r33–r37
PTC3 0802 dated 21 December 2004
TC3 Within South West Pacific except between French Polynesia and American Samoa Resolutions r38–r48
PTC3 0803 dated 21 December 2004
TC3 Within South West Pacific between French Polynesia and American Samoa Resolutions r49–r52
PTC3 0804 dated 21 December 2004
TC3 South East Asia-South Asian Subcontinent Resolutions r53–r60
PTC3 0805 dated 21 December 2004
TC3 South Asian Subcontinent-South West Pacific Resolutions r61–r67
PTC3 0806 dated 21 December 2004
TC3 South East Asia-South West Pacific except between Malaysia and American Samoa Resolutions r68–r74
PTC3 0807 dated 21 December 2004
TC3 South East Asia-South West Pacific between Malaysia and American Samoa Resolutions r75–r80
PTC3 0808 dated 21 December 2004
TC3 Japan-Korea Resolutions r81–r92
PTC3 0809 dated 21 December 2004
TC3 Japan, Korea-South Asian Subcontinent Resolutions r93–r106
PTC3 0810 dated 21 December 2004
TC3 Japan, Korea-South West Pacific except between Korea (Rep. of) and American Samoa Resolutions r107–r161
PTC3 0811 dated 21 December 2004
TC3 Japan, Korea-South West Pacific between Korea (Rep. of) and American Samoa Resolutions r162–r166
Minutes: PTC3 0814 dated 11 January 2005
Tables: PTC3 Fares 0316 dated 21 December 2004
TC3 Within South Asian Subcontinent Fares Tables
PTC3 Fares 0317 dated 1 December 2004
TC3 Within South East Asia Fares Tables
PTC3 Fares 0318 dated 21 December 2004
TC3 Within South West Pacific Fares Tables
PTC3 Fares 0319 dated 21 December 2004
TC3 South East Asia-South Asian Subcontinent Fares Tables
PTC3 Fares 0320 dated 21 December 2004
TC3 South Asian Subcontinent-South West Pacific Fares Tables
PTC3 Fares 0321 dated 21 December 2004
TC3 South East Asia-South West Pacific Fares Tables
PTC3 Fares 0322 dated 21 December 2004
TC3 Japan-Korea Fares Tables
PTC3 Fares 0323 dated 21 December 2004
TC3 Japan, Korea-South Asian Subcontinent Fares Tables
PTC3 Fares 0324 dated 21 December 2004
TC3 Japan, Korea-South West Pacific Fares Tables
Intended effective date: 1 April 2005

Docket Number: OST–2005–20101.
Date Filed: January 13, 2005.
Parties: Members of the International Air Transport Association.
Subject:

PTC23 ME–TC3 0224 dated 14 January 2005
Mail Vote 429—Resolution 010e Special Passenger Amending Resolution

between Middle East and Myanmar r1–r5
Intended effective date: 1 February 2005

Docket Number: OST–2005–20115.
Date Filed: January 14, 2005.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 431—CTC COMP 0515 dated 14 January 2005
Resolution 010g—Special Amending Resolution—Cape Verde
Mail Vote 430—PTC COMP 1208 dated 14 January 2005
Establishing Passenger Fares and Related Charges—Cape Verde r1–r4
Intended effective date: 1 February 2005

Renee V. Wright,
Acting Program Manager, Alternate Federal Register Liaison.

[FR Doc. 05–2036 Filed 2–2–05; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–7]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 14, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2001–9490 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202–267–5174) or Susan Lender (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 28, 2005.

Anthony F. Fazio,
Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2001–9490.

Petitioner: Alaska Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.709(b)(3).

Description of Relief Sought: Alaska Airlines requests amendments to the conditions and limitations section of Exemption No. 6603. One amendment would rephrase "General Maintenance Manual" to read "General Procedures Manual". Another amendment would restate certain text in paragraph 4 of the conditions and limitations section to require medevac stretcher installation training for non-certificated employees instead of non-certificated personnel. Alaska Airlines also requests an amendment that would permit flight crewmembers to remove and reinstall access panels of the smoke barrier partition in Boeing 737–200 "combi" aircraft. This amendment is requested to facilitate loading and unloading of medevac stretchers at certain remote locations where an aircraft mechanic is not available.

[FR Doc. 05–2021 Filed 2–2–05; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–9]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of and participation in this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 23, 2005.

ADDRESSES: You may submit comments on DMS Docket Number FAA–2005–20139 by any of the following methods:

- Web site: *http://dms.dot.gov* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax comments to DMS at 2–202–493–2251.
- Mail comments to: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Deliver comments to: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–

1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 28, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2005–20139.
Petitioner: Airbus.
Section of 14 CFR Affected: 14 CFR 25.841(a)(2)(i) and (ii) and (3).
Description of Relief Sought: To permit certification of the Airbus Model A380 airplane without meeting requirements of 14 CFR 25.841 (a)(2)(i) and (ii) and (3), Amendment 25–87, pertaining to cabin decompression following certain extremely rare uncontained engine rotor failures.

[FR Doc. 05–2023 Filed 2–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–8]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 23, 2005.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20049 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jan Thor (425–227–2127), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 28, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–20049.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 25.562(b)(2).
Description of Relief Sought: The Boeing Company requests relief from the pitch and roll requirements of 14 CFR 25.562(b)(2) for flightdeck seats on the Boeing Model 7E7 airplane.

[FR Doc. 05–2024 Filed 2–2–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: New Castle County, DE

AGENCIES: Federal Highway Administration (FHWA) and the Delaware Department of Transportation (DelDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement project in southern New Castle County, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Kleinburd, Realty and Environmental Program Manager, Federal Highway Administration, Delaware Division, J. Allen Frear Federal Building, 300 South New Street, Room 2101, Dover, DE 19904; Telephone: (302) 734–2966; or Mr. Mark Tudor, P.E., Project Manager, Delaware Department of Transportation, 800 Bay Road, P.O. Box 778, Dover, DE 19903; Telephone (302) 760–2275. DelDOT Public Relations Office (800) 652–5600 (in DE only).

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Delaware Department of Transportation (DelDOT), will prepare an Environmental Impact Statement (EIS) to consider the construction of a new roadway connection in southern New Castle County, Delaware. The proposed facility would connect two existing highways (U.S. Route 301 at the Maryland/Delaware border with Delaware Route 1, south of the C&D Canal), which pass through a rapidly developing area in southern New Castle County near the community of Middletown, Delaware.

In 1990, DelDOT initiated the U.S. Route 301 Corridor Study that resulted in the preparation of a Draft Environmental Impact Statement (DEIS). The DEIS evaluated the need for, location and design features of transportation alternatives to improve traffic service and operations on U.S. Route 301 and Delaware Route 896 between the Delaware/Maryland line and I–95. The DEIS compared the environmental impacts of a variety of alternatives, focused on highway solutions primarily assessing alternative highway corridors in a relatively narrow study area encompassing the Route 301/896 corridor. In December 1994, following completion of the DEIS, DelDOT announced that the corridor would be the subject of a Major Investment Study (MIS) that would assemble a package of land use measures, multi-modal transportation options, design standards for both transportation and land use activities, transportation demand management strategies and financing.

The Greater Route 301 Major Investment Study was initiated in 1995 and a Final Report was completed in 2000. The Final MIS recommended that three alternatives be studied in a new EIS. It is the intent of the FHWA and DelDOT to pursue the MIS recommendations and prepare the appropriate environmental documentation.

A program of public involvement and coordination with Federal, State, and local agencies will be initiated. Both agency coordination and public involvement will continue throughout the development of the EIS. Comments are being solicited from appropriate Federal, State, and local agencies, private organizations and citizens who have previously expressed or are known to have interest in this project. Additional informational meetings will be scheduled during the course of the project development effort. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the environmental documentation should be directed to the FHWA or DelDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: January 18, 2005.

Raymond J. McCormick,

Division Administrator, Federal Highway Administration, Dover, Delaware.

[FR Doc. 05–2112 Filed 2–2–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund") within the Department of the Treasury is soliciting comments concerning the Community Development Financial Institutions ("CDFI") Program; Certification/Re-certification Application.

DATES: Written comments should be received on or before April 4, 2005 to be assured of consideration.

ADDRESS: Direct all comments to Linda G. Davenport, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: The Certification/Re-certification application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda G. Davenport, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, D.C. 20005, or call (202) 622–8662. This is not a toll free number.

SUPPLEMENTARY INFORMATION: *Title:* The Community Development Financial Institutions Program—Certification/Re-Certification Application.

OMB Number: 1559–0028.

Abstract: The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to certified CDFIs. Through the CDFI Program, the Fund makes financial investments in and may provide technical assistance grants to CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets for community development finance purposes. In order to be certified as a CDFI, an entity must submit an application for certification to the Fund.

Type of review: Extension.

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Estimated Number of Respondents: 315.

Estimated Annual Time Per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 12,600 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: January 21, 2005.

Arthur Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–2015 Filed 2–2–05; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Thursday,
February 3, 2005

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Annual Payment Rate Updates, Policy Changes, and Clarification; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1483–P]

RIN 0938–AN28

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Annual Payment Rate Updates, Policy Changes, and Clarification

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the annual payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs). The payment amounts and factors used to determine the updated Federal rates that are described in this proposed rule have been determined based on the LTCH PPS rate year July 1, 2005 through June 30, 2006. The annual update of the long-term care diagnosis-related group (LTC–DRG) classifications and relative weights remains linked to the annual adjustments of the acute care hospital inpatient diagnosis-related group system, and would continue to be effective each October 1. The proposed outlier threshold for July 1, 2005 through June 30, 2006 is also derived from the LTCH PPS rate year calculations. We are proposing to adopt new labor market area definitions for the purpose of geographic classification and the wage index. We are also proposing policy changes and clarifications.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 29, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1483–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–1483–P, P.O. Box 8011, Baltimore, MD 21244–8011.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7197 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487 (General information); Judy Richter, (410) 786–2590 (General information, transition payments, payment adjustments for special cases, and onsite discharges and readmissions, interrupted stays, co-located providers, and short-stay outliers); Michele Hudson, (410) 786–5490 (Calculation of the payment rates, relative weights and case-mix index, market basket update, and payment adjustments); Mark Zezza, (410) 786–7937 (Calculation of the payment rates wage index, wage index, and payment adjustments); Ann Fagan, (410) 786–5662 (Patient classification system); Miechal Lefkowitz, (410) 786–5316 (High-cost outliers and budget neutrality); Linda McKenna, (410) 786–4537 (Payment adjustments, interrupted stay, and transition period).

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–1483–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. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public Web site. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.gpoaccess.gov/fr/index.html.*

Table of Contents

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
CPSA Core-Based Statistical Area
CMS Centers for Medicare & Medicaid Services
COPS Medicare conditions of participation
DRGs Diagnosis-related groups
FY Federal fiscal year
HCRIS Hospital Cost Report Information System
HHA Home health agency
HIPAA Health Insurance Portability and Accountability Act, Pub. L. 104–191
IPF Inpatient Psychiatric Facility
IPPS Acute Care Hospital Inpatient Prospective Payment System
IRF Inpatient rehabilitation facility
LTC–DRG Long-term care diagnosis-related group
LTCH Long-term care hospital
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare provider analysis and review file
OSCAR Online Survey Certification and Reporting (System)
PPS Prospective Payment System
QIO Quality Improvement Organization (formerly Peer Review organization (PRO))
RY Rate Year (July 1 through June 30)
SNF Skilled nursing facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

A. Legislative and Regulatory Authority

The Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) provide for payment for both the operating and capital-related costs of hospital inpatient stays in long-term care hospitals (LTCHs) under Medicare Part A based on prospectively set rates. The Medicare prospective payment system (PPS) for LTCHs applies to hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act), effective for cost reporting periods beginning on or after October 1, 2002.

Section 1886(d)(1)(B)(iv)(I) of the Act defines a LTCH as "a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days." Section 1886(d)(1)(B)(iv)(II) of the Act also provides an alternative definition of LTCHs: Specifically, a hospital that first received payment under section 1886(d) of the Act in 1986 and has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in FY 1997.

Section 123 of Pub. L. 106–113 requires the PPS for LTCHs to be a per discharge system with a diagnosis-related group (DRG) based patient classification system that reflects the differences in patient resources and costs in LTCHs while maintaining budget neutrality.

Section 307(b)(1) of Pub. L. 106–554, among other things, mandates that the Secretary shall examine, and may provide for, adjustments to payments under the LTCH PPS, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In a **Federal Register** document issued on August 30, 2002 (67 FR 55954), we implemented the LTCH PPS authorized under Pub. L. 106–113 and Pub. L. 106–554. This system uses information from LTCH patient records to classify patients into distinct long-term care diagnosis-related groups (LTC–DRGs) based on clinical characteristics and expected resource needs. Payments are calculated for each LTC–DRG and provisions are made for appropriate payment adjustments.

Payment rates under the LTCH PPS are updated annually and published in the **Federal Register**.

The LTCH PPS replaced the reasonable cost-based payment system under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248, for payments for inpatient services provided by a LTCH with a cost reporting period beginning on or after October 1, 2002. (The regulations implementing the TEFRA reasonable cost-based payment provisions are located at 42 CFR part 413.) With the implementation of the prospective payment system for acute care hospitals authorized by the Social Security Amendments of 1983 (Pub. L. 98–21), which added section 1886(d) to the Act, certain hospitals, including LTCHs, were excluded from the PPS for acute care hospitals and were paid their reasonable costs for inpatient services subject to a per discharge limitation or target amount under the TEFRA system. For each cost reporting period, a hospital-specific ceiling on payments was determined by multiplying the hospital's updated target amount by the number of total current year Medicare discharges. The August 30, 2002 final rule further details payment policy under the TEFRA system (67 FR 55954).

In the August 30, 2002 final rule, we presented an in-depth discussion of the LTCH PPS, including the patient classification system, relative weights, payment rates, additional payments, and the budget neutrality requirements mandated by section 123 of Pub. L. 106–113. The same final rule that established regulations for the LTCH PPS under 42 CFR part 412, subpart O, also contained LTCH provisions related to covered inpatient services, limitation on charges to beneficiaries, medical review requirements, furnishing of inpatient hospital services directly or under arrangement, and reporting and recordkeeping requirements.

We refer readers to the August 30, 2002 final (67 FR 55954) rule for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS.

On June 6, 2003, we published a final rule in the **Federal Register** (68 FR 34122) that set forth the 2004 annual update of the payment rates for the Medicare PPS for inpatient hospital services furnished by LTCHs. It also changed the annual period for which the payment rates are effective. The annual updated rates are now effective from July 1 through June 30 instead of from October 1 through September 30. We refer to the July through June time period as a "long-term care hospital rate year" (LTCH PPS rate year). In addition, we changed the publication schedule for the annual update to allow for an effective date of July 1. The payment amounts and factors used to determine the annual update of the LTCH PPS Federal rate is based on a LTCH PPS rate year. While the LTCH payment rate update is effective July 1, the annual update of the LTC–DRG classifications and relative weights are linked to the annual adjustments of the acute care hospital inpatient diagnosis-related groups and are effective each October 1.

On May 7, 2004 we published a final rule in the **Federal Register** (69 FR 25674) that set forth the 2005 LTCH PPS rate year annual update of the payment rates for the Medicare PPS for inpatient hospital services provided by LTCHs. We also discussed clarification of the procedures under which a satellite facility or remote location of a LTCH may be designated as a separately certified LTCH. In addition, the final rule included a provision to expand the existing interrupted stay policy at § 412.531, and a revision to the procedure for computing the day count in the average length of stay calculation for Medicare patients for hospitals qualifying as LTCHs at § 412.23(e)(3)(ii).

B. Criteria for Classification as a LTCH

1. Classification as a LTCH

Under the existing regulations at § 412.23(e)(1) and (e)(2)(i), which implement section 1886(d)(1)(B)(iv)(I) of the Act, to qualify to be paid under the LTCH PPS, a hospital must have a provider agreement with Medicare and must have an average Medicare inpatient length of stay of greater than 25 days. Alternatively, for cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the PPS in 1986, and can demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease must have an average inpatient length of stay for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days (§ 412.23(e)(2)(ii)).

Regulations at § 412.23(e)(3) provide that, subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average Medicare inpatient length of stay, specified under § 412.23(e)(2)(i) is calculated by dividing the total number of covered and noncovered days of stay of Medicare inpatients (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period. Section 412.23 also provides that subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average inpatient length of stay specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.

In the LTCH PPS final rule published on May 7, 2004, we specified the procedure for calculating a hospital's inpatient average length of stay for purposes of classification as a LTCH. That is, if a patient's stay includes days of care furnished during two or more separate consecutive cost reporting periods, the total days of a patient's stay would be reported in the cost reporting period during which the patient is discharged (69 FR 25705). Therefore, we have revised the regulations at § 412.23(e)(3)(ii) to specify that, effective for cost reporting periods beginning on or after July 1, 2004, in calculating a hospital's average length of stay, if the days of a stay of an inpatient involves days of care furnished during two or more separate consecutive cost reporting periods, the total number of days of the stay are considered to have occurred in the cost reporting period during which the inpatient was discharged.

Effective for cost reporting periods beginning on or after July 1, 2004, but before July 1, 2005, a one-year exception is provided in the event some providers failed to meet the 25-day ALOS criteria due to this change in policy. In these cases, the fiscal intermediary will do an additional calculation to determine if these providers meet the average length of stay methodology found in § 412.23(e)(3)(i).

Fiscal intermediaries verify that LTCHs meet the average length of stay requirements. We note that the inpatient days of a patient who is admitted to a LTCH without any remaining Medicare days of coverage, regardless of the fact that the patient is a Medicare beneficiary, will not be included in the above calculation. Because Medicare would not be paying for any of the patient's treatment, data on the patient's stay would not be included in the Medicare claims processing systems. In order for both covered and noncovered days of a LTCH hospitalization to be included, a patient admitted to the LTCH must have at least one remaining benefit day as described in § 409.61 (68 FR 34123).

The fiscal intermediary's determination of whether or not a

hospital qualified as an LTCH is based on the hospital's discharge data from the hospital's most recent complete cost reporting period (§ 412.23(e)(3)) and is effective at the start of the hospital's next cost reporting period (§ 412.22(d)). However, if the hospital does not meet the average length of stay requirement as specified in § 412.23(e)(2)(i) and (ii), the hospital may provide the intermediary with data indicating a change in the average length of stay by the same method for the period of at least 5 months of the immediately preceding 6-month period (69 FR 25676). Our interpretation of the current regulations at § 412.23(e)(3) was to allow hospitals to submit data using a period of at least 5 months of the most recent data from the immediately preceding 6-month period.

As we stated in the IPPS final rule, published August 1, 2003, prior to the implementation of the LTCH PPS, we did rely on data from the most recently submitted cost report for purposes of calculating the average length of stay. The calculation to determine whether an acute care hospital qualifies for LTCH status was based on total days and discharges for LTCH inpatients. However, with the implementation of the LTCH PPS, with respect to the average length of stay specified under § 412.23(e)(2)(i), we revised § 412.23(e)(3)(i) to only count total days and discharges for Medicare inpatients (68 FR 45464). In addition, the average length of stay specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period. As we pointed out in the IPPS final rule, we are unable to capture the necessary data from our present cost reporting forms. We have, therefore, notified fiscal intermediaries and LTCHs that until the cost reporting forms are revised, for purposes of calculating the average length of stay, we will be relying upon census data extracted from MedPAR files that reflect each LTCH's cost reporting period (68 FR 45464). Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iv).

In the May 7, 2004 final rule (69 FR 25709), we revised the regulations at § 412.23(e) to clarify our longstanding policy by stating that a satellite facility or remote location that voluntarily separates from its parent LTCH in order to become an independent LTCH it must first be considered a State-licensed and Medicare-certified hospital before seeking classification as a LTCH. In this regard, a satellite facility or remote location that voluntarily wishes to become an independent LTCH is required to demonstrate that it meets the average length of stay requirements, as specified under §412.23(e)(2)(i) and (ii), based on discharges that occur on or after the effective date of its participation under Medicare as a separate hospital. Once the satellite facility or remote location is Medicare certified, then the hospital may consider using the length of stay data accumulated as a hospital to satisfy the classification requirements for becoming a "specialty" hospital (in this case, a LTCH). That is, the hospital must demonstrate that it has a Medicare inpatient length of stay of greater than 25 days. The data used to calculate the Medicare average length of stay is based on discharges that occur after the satellite facility or remote location has established itself as a separate participating hospital. However, there is an exception to this policy for satellite facilities and remote locations of LTCHs that are affected by § 413.65(e)(3) and that were in existence prior to the effective date of the provider-based location requirements; that is, cost reporting periods beginning on or after July 1, 2003. We will assign new Medicare provider numbers to former satellite facilities or remote locations that have become certified as Medicare participating hospitals. However, if these newly certified hospitals should fail the provider-based locations requirements under § 413.65(e)(3), they may be classified as LTCHs if they meet specific conditions. Under this exception, calculation of the ALOS for purposes of qualifying as a LTCH are based on discharge data during the 5 months of the immediate 6 months preceding the facility's separation from the main hospital. This provision only applies to those facilities or locations that became subject to the revised provider-based location rules on July 1, 2003, and that seek classification as LTCHs for Medicare payment purposes.

2. Hospitals Excluded From the LTCH PPS

The following hospitals are paid under special payment provisions, as described in § 412.22(c) and, therefore, are not subject to the LTCH PPS rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR Part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)) (statewide all-payer systems, subject to the rate-of-increase test at section 1814(b) of the Act).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

C. Transition Period for Implementation of the LTCH PPS

In the August 30, 2002 final rule, we provided for a 5-year transition period from reasonable cost-based reimbursement to fully Federal prospective payment for LTCHs (67 FR 56038). However, LTCHs have the option to elect to be paid based on 100 percent of the Federal prospective payment. During the 5-year period, two payment percentages are to be used to determine a LTCH's total payment under the PPS. The blend percentages are as follows:

Cost reporting periods beginning on or after	Prospective payment Federal rate percentage	Reasonable cost-based reimbursement rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

D. Health Insurance Portability and Accountability Act Compliance

We note that as of October 16, 2002, a LTCH that was required to comply with the Administrative Simplification Standards under the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104–191) and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107–105) is obligated to comply with the standards for submitting claim forms to the LTCH's Medicare fiscal intermediary (45 CFR 162.1002 and 45 CFR 162.1102). Beginning October 16, 2003, LTCHs that obtained an extension and that are required to comply with the HIPAA Administrative Simplification Standards must start submitting electronic claims in compliance with the HIPAA regulations cited above, among others.

II. Summary of the Major Contents of This Proposed Rule

In this proposed rule, we propose to set forth the annual update to the payment rates for the Medicare 2006 LTCH PPS rate year. The following is a summary of the proposed update changes that we are addressing in this final rule:

- In section IV. of this preamble, we discuss the annual update of LTC–DRG classifications and relative weights and specify that they remain linked to the annual adjustments of the acute care hospital inpatient DRG system, which are based on the annual revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes, effective each October 1.
- As discussed in section IV.C.1. of this preamble, we are proposing to adopt new labor market area definitions for LTCHs which are based on the new Core-Based Statistical Areas (CBSAs), announced by the OMB late in 2000. The CBSAs were adopted for acute care hospitals under the IPPS effective October 1, 2004 in the FY 2005 IPPS final rule.
- In sections VI. through IX. of this preamble, we are including proposed revisions to the wage index, the proposed excluded hospital with capital market basket that would be applied to the current standard Federal rate to determine the prospective payment rates, the applicable adjustments to payment rates, the proposed outlier threshold, the transition period, and the proposed budget neutrality factor.
- In section IX. of this preamble, we discuss the recommendations made in the June 2004 MedPAC Report concerning the definition of LTCHs. In this section, we also discuss our continuing monitoring efforts to evaluate the LTCH PPS, including a review of the QIO's role.
- In section XII. of this preamble, we analyze the impact of the proposed changes in this proposed rule on Medicare expenditures and on Medicare-participating LTCHs and Medicare beneficiaries.

III. Long-Term Care Diagnosis-Related Group (LTC–DRG) Classifications and Relative Weights

[If you choose to comment on issues in this section, please include the caption "LTC–DRG CLASSIFICATIONS AND RELATIVE WEIGHTS" at the beginning of your comments.]

A. Background

Section 123 of Pub. L. 106–113 specifically requires that the PPS for LTCHs be a per discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 307(b)(1) of Pub. L. 106–554 modified the requirements of section 123 of Pub. L. 106–113 by specifically requiring that the Secretary examine "the feasibility and the impact of basing payment under such a system [the LTCH PPS] on the use of existing (or refined) hospital DRGs that have been modified to account for different resource use of LTCH patients as well as the use of the most recently available hospital discharge data."

In accordance with section 307(b)(1) of Pub. L. 106–554 and § 412.515 of our existing regulations, the LTCH PPS uses information from LTCH patient records to classify patient cases into distinct LTC–DRGs based on clinical characteristics and expected resource needs. The LTC–DRGs used as the patient classification component of the LTCH PPS correspond to the hospital inpatient DRGs in the IPPS. We apply weights to the existing hospital inpatient DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs.

In a departure from the IPPS, we use low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. In order to deal with the large number of low volume DRGs (all DRGs with fewer than 25 cases), we group low volume DRGs into 5 quintiles based on average charge per discharge. (A listing of the composition of low volume quintiles appears in the August 30, 2002 LTCH PPS final rule at 67 FR 55986.) We also take into account adjustments to payments for cases in which the stay at the LTCH is five-sixths of the geometric average length of stay and classify these cases as short-stay outlier cases. (A detailed discussion of the application of the Lewin Group model that was used to develop the LTC–DRGs appears in the August 30, 2002 LTCH PPS final rule at 67 FR 55978.)

B. Patient Classifications Into DRGs

Generally, under the LTCH PPS, Medicare payment is made at a predetermined specific rate for each discharge; that payment varies by the LTC–DRG to which a beneficiary's stay is assigned. Cases are classified into LTC–DRGs for payment based on the following six data elements:

(1) Principal diagnosis.
(2) Up to eight additional diagnoses.
(3) Up to six procedures performed.
(4) Age.
(5) Sex.
(6) Discharge status of the patient.

As indicated in the August 30, 2002 LTCH PPS final rule, upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the most current version of the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). As of October 16, 2002, a LTCH that was required to comply with the HIPAA Administrative Simplification Standards and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107–105) is obligated to comply with the standards at 45 CFR 162.1002 and 45 CFR 162.1102. Completed claim forms are to be submitted to the LTCH's Medicare fiscal intermediary.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, the following types of cases are selected for further development:

- Cases that are improperly coded. (For example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.)
- Cases including surgical procedures not covered under Medicare. (For

example, organ transplant in a nonapproved transplant center.)

• Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 136.3, Pneumocystosis, contains all appropriate digits, but if it is reported with either fewer or more than 4 digits, the claim will be rejected by the MCE as invalid.)

• Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, code 437.9, Unspecified cerebrovascular disease. While this code is valid according to the ICD–9–CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE, each claim will be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. As indicated in August 30, 2002 LTCH PPS final, the Medicare GROUPER, which is used under the LTCH PPS, is specialized computer software, and is the same GROUPER software program used under the IPPS. The GROUPER software was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC–DRG assignment, the Medicare fiscal intermediary determines the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments. As provided for under the IPPS, we provide an opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary and to submit additional information within a specified timeframe (§ 412.513(c)).

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update under both the IPPS (§ 412.60(e)) and the LTCH PPS (§ 412.517). As discussed in greater detail below in sections III.D. and E. of this preamble, with the implementation of section 503(a) of Pub. L. 108–173, there is the possibility that one feature of the GROUPER software program may be updated twice during a Federal fiscal year (October 1 and April 1) as required by the statute for the IPPS (69 FR 48954–48957), August 11, 2004). Specifically, ICD–9 diagnosis and procedure codes for new medical technology may be created and added to existing DRGs in the middle of the Federal fiscal year on April 1. This policy change will have no effect, however, on the LTC–DRG relative weights which will continue to be updated only once a year (October 1), nor will there be any impact on Medicare payments under the LTCH PPS.

C. Organization of DRGs

The DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are assigned based on a surgical hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. The GROUPER does not recognize all ICD–9–CM procedure codes as procedures that affect DRG assignment, that is, procedures which are not surgical (for example, EKG), or minor surgical procedures (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, sex, discharge status, and presence or absence of complications or comorbidities (CC). We note that CCs are defined by certain secondary diagnoses not related to, or not inherently a part of, the disease process identified by the principal diagnosis. (For example, the GROUPER would not recognize a code from the 800.0x series, Skull fracture, as a CC when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to preexisting conscious level.) In addition, we note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

In its June 2000 Report to Congress, MedPAC recommended that the Secretary "* * * improve the hospital inpatient prospective payment system by adopting, as soon as practicable, diagnosis-related group refinements that more fully capture differences in severity of illness among patients," (Recommendation 3A, p. 63). We have determined it is not practical at this time to develop a refinement to inpatient hospital DRGs based on severity due to time and resource requirements. However, this does not preclude us from development of a severity-adjusted DRG refinement in the future. That is, a refinement to the list of comorbidities and complications could be incorporated into the existing DRG structure. It is also possible that a more comprehensive severity adjusted structure may be created if a new code set is adopted. That is, if ICD–9–CM is replaced by ICD–10–CM (for diagnostic coding) and ICD–10–PCS (for procedure coding) or by other code sets, a severity concept may be built into the resulting DRG assignments. Of course any change to the code set would be adopted through the process established in the HIPAA Administrative Simplification Standards provisions.

D. Update of LTC–DRGs

For FY 2005, the LTC–DRG patient classification system was based on LTCH data from the FY 2003 MedPAR file, which contained hospital bills data from the March 2004 update. The patient classification system consisted of 520 DRGs that formed the basis of the FY 2004 LTCH PPS GROUPER. The 520 LTC–DRGs included two "error DRGs." As in the IPPS, we included two error DRGs in which cases that cannot be assigned to valid DRGs will be grouped. These two error DRGs are DRG 469 (Principal Diagnosis Invalid as a Discharge Diagnosis) and DRG 470 (Ungroupable). (See the FY 2005 IPPS FY 2005 final rule (69 FR 408982–49000).) The other 518 LTC–DRGs are the same DRGs used in the IPPS GROUPER for FY 2005 (Version 22.0).

In the past, in the health care industry, annual changes to the ICD–9–CM codes were effective for discharges occurring on or after October 1 each year. Thus, the manual and electronic versions of the GROUPER software, which are based on the ICD–9–CM codes, were also revised annually and effective for discharges occurring on or after October 1 each year. As discussed earlier, the patient classification system for the LTCH PPS (LTC–DRGs) is based on the IPPS patient classification system (CMS–DRGs), which had historically been updated annually and was effective for discharges occurring on or after October 1 through September 30 each year.

Recently, the ICD–9–CM coding update process has been revised as discussed in greater detail in the FY 2005 IPPS final rule (69 FR 48954–48957). Specifically, section 503(a) of Pub. L. 108–173 includes a requirement for updating ICD–9–CM codes twice a year instead of the current process of annual updates on October 1 of each year. This requirement is included as part of the amendments to the Act relating to recognition of new medical technology under the IPPS. Section 503(a) of Pub. L. 108–173 amended section 1886(d)(5)(K) of the Act by adding a new clause (vii) which states that "the Secretary shall provide for the addition of new diagnosis and procedure codes by April 1 of each year, but the addition of such codes shall not require the Secretary to adjust the payment (or diagnosis-related group classification) * * * until the fiscal year that begins after such date." This requirement will improve the recognition of new technologies under the IPPS by accounting for the GROUPER software at an earlier date. Despite the fact that aspects of the GROUPER software may be updated to recognize any new technology codes, there will be no impact on either LTC–DRG assignments or payments under the LTCH PPS. That is, no new LTC–DRGs will be created or deleted and the relative weights will remain the same.

In the August 30, 2002 final rule (67 FR 55984), when we established the LTCH PPS, we determined that the DRG-based patient classification system for the LTCH PPS would use the same GROUPER software as the IPPS, and therefore would be updated each October 1, as set forth in § 412.8(b). In the June 6, 2003 LTCH PPS final rule (68 FR 34125–34128), when we revised the annual rate update for the LTCH PPS to a July 1 through June 30 schedule, we specified that updates of the LTC–DRGs and re-weighting of LTC–DRG weights would remain linked to the IPPS GROUPER update which functions on an October 1 through September 30 schedule. Therefore, under this existing policy, during a LTCH PPS rate year, two versions of the GROUPER software are utilized for purposes of DRG creation or deletion and relative weight assignment during the LTCH PPS rate year that is established each July 1. The updated LTC–DRG classifications and relative weights in the GROUPER that were finalized on October 1, preceding the beginning of a LTCH rate year on July 1, would be in effect with the new Federal rate from July 1 through September 30. On October 1, the updated version of the GROUPER would be used from that October 1 through June 30.

The updated DRGs and GROUPER software, used by both the IPPS and the LTCH PPS, are based on the ICD–9–CM codes updated. (The use of the ICD–9–CM codes in this manner is consistent with current usage and the HIPAA regulations.) As noted above, historically, these codes have been published annually in the IPPS proposed rule and final rule. Consistent with historical approaches taken in the IPPS and LTCH PPS, October 1 will continue to be the effective date of revisions to the CMS DRGs and the LTC–DRGs. However, because of the statutory changes under Section 503(a) of Pub. L. 108–173, new ICD–9–CM codes may become effective on both October 1 and April 1. In the past, the new or revised ICD–9–CM codes were not used by the industry for either the IPPS or the LTCH PPS until the beginning of the Federal fiscal year (effective for discharges occurring on or after October 1). Beginning with FY 2005, as we explained above, under the authority of Section 503(a) of Pub. L. 108–173 which amends section 1886(d)(5)(K) of the Act, there is the potential for new ICD–9–CM codes to become effective both at the beginning of the Federal fiscal year, October 1, and also on April 1. As we have already noted, a full discussion along with a description of the implementation of this provision, was published in the **Federal Register** in the FY 2005 IPPS final rule (69 FR 48954–48957). We want to emphasize, however, that although it was established that the IPPS GROUPER, which is also used by the LTCH PPS, could be calibrated with respect to ICD–9–CM codes, two times each year, October and April, as necessary, to allow the inclusion of new codes reflecting new medical technologies and procedures for patients in acute care hospitals and that, therefore, the GROUPER could be updated to recognize any new codes in April, the inclusion of these new codes would not result in the creation or deletion of LTC–DRGs or changes in the relative weights and, therefore, would not affect the DRG assigned by the GROUPER for LTC–DRGs, nor payments under the LTCH PPS.

As noted above, updates to the GROUPER for both the IPPS and the LTCH PPS (with respect to relative weights and the creation or deletion of DRGs) are made in the annual IPPS proposed and final rules and are effective each October 1. We explained in the FY 2005 IPPS final rule (69 FR 48956), that since we do not publish a mid-year IPPS rule, April 1 code updates discussed above will not be published in a mid-year IPPS rule. Rather, we will assign any new diagnostic or procedure codes to the same DRG in which its predecessor code was assigned, so that there will be no impact on the DRG assignment. Any proposed coding updates will be available through the Web sites indicated in the FY 2005 IPPS final rule (69 FR 48956) and provided below in section III.E.2. of this preamble and through the Coding Clinic for ICD–9–CM. Publishers and software vendors currently obtain code changes through these sources in order to update their code books and software systems. If new codes are implemented on April 1, revised code books and software systems, including the GROUPER software program, will be necessary because we must use current ICD–9–CM codes. Therefore, for purposes of the LTCH PPS, since each ICD–9–CM code must be included in the GROUPER algorithm to classify each case into a LTC–DRG, the GROUPER software program used under the LTCH PPS would need to be revised to accommodate any new codes.

As mentioned above, however, an April 1 update of the ICD–9–CM codes would only result in a change to the CMS DRG GROUPER software program effective April 1, so that it will recognize the new technology code and assign it to the appropriate DRG, but will not result in a change to the relative weights used under either the IPPS or the LTCH PPS, respectively. Consistent with our current practice, any changes to the DRGs or relative weights will be made at the beginning of the next Federal fiscal year (October 1).

As specified in the May 7, 2004 LTCH PPS final rule (69 FR 25674) and the FY 2005 IPPS final rule (69 FR 48982), and discussed above, we annually update to the LTCH PPS payment rates effective from July 1 through June 30 each year. As a result, the LTCH PPS currently uses two GROUPER software programs during a LTCH PPS rate year (July 1 through June 30): one GROUPER for 3 months (from July 1 through September 30); and an updated GROUPER for 9 months (from October 1 through June 30). The need to use two GROUPERs was based upon the October 1 effective date of the updated ICD–9–CM coding system. As previously discussed, new ICD–9–CM codes may result in changes to the structure of the DRGs caused by mapping the new codes to existing DRGs. In order for the industry to be on the same schedule (for both the IPPS and the LTCH PPS) for the use of the most current ICD–9–CM codes, it had

been necessary for us to apply two GROUPER programs under the LTCH PPS.

With the potential addition of new codes effective on April 1, the LTCH PPS may now use three GROUPER programs during the LTCH PPS rate year (July 1 through June 30), if new diagnosis and procedure codes are added on April 1. Specifically, one GROUPER (GROUPER 1) would be used for the first 3 months (from July 1 through September 30); a second GROUPER (GROUPER 2) would be used for the next 6 months (from October 1 through March 31); and the third GROUPER (GROUPER 3) would be used for the last 3 months (from April 1 through June 30). The need to use three GROUPER software programs during a single LTCH PPS rate year in the event of an April 1 ICD–9–CM code update is because it is necessary to use the updated ICD–9–CM codes (as explained above) in order to classify each case into a LTC–DRG for payment purposes. The change from GROUPER 1 to GROUPER 2 (on October 1) would coincide with the annual update to the LTC–DRGs and relative weights under § 412.517, which would be effective for that entire Federal fiscal year, just as it has been since we implemented the LTCH PPS. The change from GROUPER 2 to GROUPER 3 (on April 1) would only update the CMS DRG structure by mapping the new code to an existing DRG, and would not result in the addition or deletion of any DRGs nor would it result in a change to the LTC–DRG relative weights. If no new diagnoses or procedure codes are added on April 1, however, there would be no need to update the GROUPER and we would continue to use 2 GROUPERs during the course of a LTCH PPS rate year as is currently done. But even with an April 1 update to the ICD–9–CM codes (and consequently the GROUPER software), only two sets of LTC–DRG relative weights will be used during a LTCH PPS rate year (July 1 through June 30), one set from July 1 though September 30 and a second set from October 1 through June 30, just as we have done since we moved the annual LTCH PPS update to July 1 (effective beginning July 1, 2003).

As we discussed in the FY 2005 IPPS final rule (69 FR 48956), in implementing section 503(a) of Pub. L. 108–173, there will only be an April 1 update if new technology codes are requested and approved. In that same IPPS final rule, we specified that there are no new codes for April 1, 2005 implementation. However, if new codes had been approved for April 1, 2005 implementation, the subsequent changes to the DRG structure (that is, the mapping of the new codes to existing DRGs), but not to FY 2005 LTC–DRG relative weights and, consequently, LTCH PPS payment rates, would have resulted in the use of a third GROUPER during the 2005 LTCH PPS rate year. However, as noted above, since there are no new codes for April 1, 2005 implementation, and the next update to the ICD–9–CM coding system will not occur until October 1, 2005, only two GROUPER software programs will be used during the 2005 LTCH PPS rate year (July 1, 2004 through June 30, 2005): one GROUPER from July 1, 2004 through September 30, 2004, and a second GROUPER from October 1, 2004 through June 30, 2005.

Discharges beginning on October 1, 2004 and before October 1, 2005 (Federal FY 2005) are using Version 22.0 of the GROUPER software for both the IPPS and the LTCH PPS. Consistent with our current practice, any changes to the DRGs or relative weights will be made at the beginning of the Federal fiscal year (October 1). We will notify LTCHs of any revised LTC–DRG relative weights based on the final DRGs and the applicable GROUPER version for the IPPS that will be effective October 1, 2005. Furthermore, as discussed above, we would notify LTCHs of any revisions to the CMS GROUPER that would be implemented April 1, 2006.

E. ICD–9–CM Coding System

1. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular LTC–DRG will help determine the amount that will be paid for the case, it is important that the coding is accurate. Classifications and terminology used in the LTCH PPS are consistent with the ICD–9–CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics ("Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980") and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services.

We point out that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPAA Administrative Simplification Act of 1996 (45 CFR Part 162). Furthermore, the UHDDS has been used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. In addition, the following definitions (as described in the 1984 Revision of the UHDDS, approved by the Secretary of Health and Human Services for use starting January 1986) are requirements of the ICD–9–CM coding system, and have been used as a standard for the development of the CMS–DRGs:

- Diagnoses are defined to include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the length of stay or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.
- All procedures performed will be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

We provide LTCHs with a 60-day window after the date of the notice of the initial LTC–DRG assignment to request review of that assignment. Additional information may be provided by the LTCH to the fiscal intermediary as part of that review.

2. Maintenance of the ICD–9–CM Coding System

The ICD–9–CM Coordination and Maintenance (C&M) Committee is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, that is, charged with maintaining and updating the ICD–9–CM system. The C&M Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The C&M Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the

Tabular List and Alphabetic Index for Procedures.

The C&M Committee encourages participation by health-related organizations in the above process and holds public meetings for discussion of educational issues and proposed coding changes twice a year at the CMS Central Office located in Baltimore, Maryland. The agenda and dates of the meetings can be accessed on our Web site at: *http://www.cms.gov/paymentsystems/icd9.*

As discussed above, section 503(a) of Pub. L. 108–173 includes a requirement for updating ICD–9–CM codes twice a year instead of the current process of annual updates on October 1 of each year. This requirement will improve the recognition of new technologies under the IPPS by accounting for them in the GROUPER software at an earlier date. Because this new statutory requirement could have a significant impact on health care providers, coding staff, publishers, system maintainers, and software systems, among others, we solicited comments on our proposed provisions to implement this requirement as part of the FY 2005 IPPS proposed rule (69 FR 28220–28221). We responded to comments and published our new policy regarding the updating of ICD–9–CM codes in the FY 2005 IPPS final rule (69 FR 48954–48957).

While this new requirement states that the Secretary shall not adjust the payment of the DRG classification for any codes created for use on April 1, DRG software and other systems will have to be updated in order to recognize and accept the new codes. Because, as discussed above, the LTC–DRGs are the same DRGs used under the IPPS, this means that the Medicare GROUPER software program used under both the IPPS and the LTCH PPS would need to be revised to reflect ICD–9–CM codes, if any coding changes were implemented on April 1. Furthermore, although the CMS GROUPER software used under both the IPPS and the LTCH PPS would need to be revised to accommodate the new codes effective April 1, there would be no additions or deletions of DRGs nor would the relative weights used under the IPPS and the LTCH PPS, respectively, be changed until the annual update October 1 (to the extent that those changes are warranted), just as they have been historically updated. As the LTCH PPS is based on the IPPS, we will adopt the same approach used under the IPPS for potential April 1 ICD–9–CM coding changes. That is, we will assign any new diagnosis codes or procedure codes to the same DRG in which its predecessor code was assigned, so there will be no DRG impact in terms of potential DRG assignment until the following October 1. We will maintain the current method of publicizing any new code changes, as noted below. Current addendum and code title information is published on the CMS Web page at: *http://www.cms.hhs.gov/paymentsystem/icd9.* Summary tables showing new, revised, and deleted code titles are also posted on the following CMS Web page: *http://www.cms.hhs.gov/medlearn/icd9code.asp.* Information on ICD–9–CM diagnosis codes can be found at *http://www.cdc.gov/nchs/icd9.htm.* Information on new, revised, and deleted ICD–9–CM codes is also available in the AHA publication Coding Clinic for ICD–9–CM. AHA also distributes information to publishers and software vendors. We also send copies of all ICD–9–CM coding changes to our contractors for use in updating their systems and providing education to providers.

If the April 1 changes are made to ICD–9–CM diagnosis or procedure codes, LTCHs will be required to obtain the new codes, coding books, or encoder updates, and make other system changes in order to capture and report the new codes. We indicated in the IPPS final rule that we were aware of the additional burden this will have on health care providers.

It should be noted that any new codes created for April 1 implementation will be limited to those diagnosis and procedure code revisions primarily needed to describe new technologies and medical services. However, we reiterate that the process for discussing updates to the ICD–9–CM has been an open process through the ICD–9–CM C&M Committee since 1995. Any requestor who makes a clear and convincing case for the need to update ICD–9–CM codes for purposes of the IPPS new technology add-on payment process through an April 1 update will be given the opportunity to present the merits of their proposed new code.

To reiterate, at the October 2004 C&M Committee meeting, no new codes were proposed for update on April 1, 2005. While no DRG additions or deletions or changes to relative weights will occur prior to the usual October 1 update, in the event any new codes had been created to describe new technologies and medical services through an April 1, 2005 update, under our proposed policy, LTCH systems would have been expected to recognize and report those new codes through the channels as described above in this section.

As discussed above, the ICD–9–CM coding changes that have been adopted by the C&M Committee could become effective either at the beginning of each Federal fiscal year, October 1, or, in the case of codes created to capture new technology, April 1 of each year. Coders will be expected to use the most current updated ICD–9–CM codes, as updated. Because we do not publish a mid-year IPPS rule, the currently accepted avenues of information dissemination will be used to inform all ICD–9–CM code users of any changes to the coding system. These avenues were described above in section III.D. of this preamble and have been discussed at length in the FY 2005 IPPS final rule (69 FR 48956). Coders in LTCHs using the updated ICD–9–CM coding system will be on the same schedule as the rest of the health care industry. In the past, the updated ICD–9–CM was not available for use until October 1 of each year, which is 5 months after the date that we publish the LTCH annual payment rate update final rule.

Therefore, because the LTCH PPS and the IPPS uses the identical GROUPER software, the LTCH PPS will be directly affected by the statutory mandates directed at the IPPS, promulgated in section 503(a) of Pub. L. 108–173. The practical effect of this provision is that the GROUPER software must accept new ICD–9 codes reflecting the incorporation of new technologies into inpatient treatment at an acute care hospital prior to the scheduled annual update of the GROUPER software. Despite the fact that there are no provisions for additional payments for new technology under the LTCH PPS as there are under the IPPS, statutory compliance requires an alteration of the GROUPER software used by both the IPPS and the LTCH PPS. While DRG assignments would not change from October 1 through September 30, it is possible that there could be additional new ICD–9–CM diagnosis and procedure codes during that time, which would be assigned to predecessor DRGs (as described above). For both the IPPS and LTCH coders, it is possible that there will be ICD–9–CM codes in effect from October 1 through March 31, with additional ICD–9–CM codes in effect from April 1 through September 30. Presently, as there were no coding changes suggested for an April 1, 2005 update, the ICD–9–CM coding set implemented on October 1, 2004 will continue through September 30, 2005 (FY 2005).

Of particular note to LTCHs are the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D) located in the annual proposed and final rules for the IPPS. Claims with invalid codes are not processed by the Medicare claims processing system.

3. Coding Rules and Use of ICD–9–CM Codes in LTCHs

We emphasize the need for proper coding by LTCHs. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration. We continue to urge LTCHs to focus on improved coding practices. Because of concerns raised by LTCHs concerning correct coding, we have asked the American Hospital Association (AHA) to provide additional clarification or instruction on proper coding in the LTCH setting. The AHA will provide this instruction via their established process of addressing questions through their publication "Coding Clinic for ICD–9–CM." Written questions or requests for clarification may be addressed to the Central Office on ICD–9–CM, American Hospital Association, One North Franklin, Chicago, IL 60606. A form for the question(s) is available to be downloaded and mailed on AHA's Web site at: *www.ahacentraloffice.org.* In addition, current coding guidelines are available at the National Center for Health Statistics (NCHS) Web site: *www.cdc.gov/nchs.icd9.htm.*

In conjunction with the cooperating parties (AHA, the American Health Information Management Association (AHIMA), and NCHS), we reviewed actual medical records and are concerned about the quality of the documentation under the LTCH PPS, as was the case at the beginning of the IPPS. We fully believe that, with experience, the quality of the documentation and coding will improve, just as it did for the IPPS. As noted above, the cooperating parties have plans to assist their members with improvement in documentation and coding issues for the LTCHs through specific questions and coding guidelines. The importance of good documentation is emphasized in the revised ICD–9–CM Official Guidelines for Coding and Reporting: "A joint effort between the attending physician and coder is essential to achieve complete and accurate documentation, code assignment, and reporting of diagnoses and procedures. The importance of consistent, complete documentation in the medical record cannot be overemphasized. Without such documentation, the application of all coding guidelines is a difficult, if not impossible, task." (Coding Clinic for ICD–9–CM, Fourth Quarter 2002, page 115)

To improve medical record documentation, LTCHs should be aware that if the patient is being admitted for continuation of treatment of an acute or chronic condition, guidelines at Section I.B.10 of the Coding Clinic for ICD–9–CM, Fourth Quarter 2002 (page 129) are applicable concerning selection of principal diagnosis. To clarify coding advice issued in the August 30, 2002 final rule (67 FR 55979–55981), we would like to point out that at Guideline I.B.12, Late Effects, a late effect is considered to be the residual effect (condition produced) after the acute phase of an illness or injury has terminated (Coding Clinic for ICD–9–CM, Fourth Quarter 2002, page 129). Regarding whether a LTCH should report the ICD–9–CM code(s) for an unresolved acute condition instead of the code(s) for late effect of rehabilitation, we emphasize that each case must be evaluated on its unique circumstances and coded appropriately. Depending on the documentation in the medical record, either a code reflecting the acute condition or rehabilitation could be appropriate in a LTCH.

Since implementation of the LTCH PPS, our Medicare fiscal intermediaries have been conducting training and providing assistance to LTCHs in correct coding. We have also issued manuals containing procedures as well as coding instructions to LTCHs and fiscal intermediaries. We will continue to conduct such training and provide guidance on an as-needed basis. We also refer readers to the detailed discussion on correct coding practices in the August 30, 2002 LTCH PPS final rule (67 FR 55979–55981). Additional coding instructions and examples will be published in Coding Clinic for ICD–9–CM.

F. Method for Updating the LTC–DRG Relative Weights

As discussed in the May 7, 2004 LTCH PPS final rule (68 FR 25681), under the LTCH PPS, each LTCH will receive a payment that represents an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for those Medicare patients whose care is more costly. Therefore, in accordance with § 412.523(c), we adjust the standard Federal PPS rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

Under this payment system, relative weights for each LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (§ 412.515). To ensure that Medicare patients who are classified to each LTC–DRG have access to an appropriate level of services and to encourage efficiency, we calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

As we discussed in the FY 2005 IPPS final rule (69 FR 48982–49000), the LTC–DRG relative weights effective under the LTCH PPS for Federal FY 2005 were calculated using the March 2004 update of FY 2003 MedPAR data and Version 22.0 of the CMS GROUPER software. We use total days and total charges in the calculation of the LTC–DRG relative weights.

By nature, LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we use a hospital-specific relative value method to calculate relative weights. We believe this method removes this hospital-specific source of bias in measuring average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. (See the FY 2005 IPPS final rule (69 FR 48984) for further information on the hospital-specific relative value methodology.)

In order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), we grouped those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. For FY 2005 based on the FY 2003 MedPAR data, we identified 172 LTC–DRGs that contained between 1 and 24 cases. This list of low volume LTC–DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 34 LTC–DRGs (172/5 = 34 with 2 LTC–DRG as a remainder). Each of the low volume LTC–DRGs grouped to a specific quintile received the same relative weight and average length of stay using the formula applied to the regular LTC–DRGs (25 or more cases), as described below. (See the FY 2005 IPPS final rule

(69 FR 48988–48989) for further explanation of the development and composition of each of the five low volume quintiles for FY 2005.)

After grouping the cases in the appropriate LTC–DRG, we calculated the relative weights by first removing statistical outliers and cases with a length of stay of 7 days or less. Next, we adjusted the number of cases in each LTC–DRG for the effect of short-stay outlier cases under § 412.529. The short-stay adjusted discharges and corresponding charges were used to calculate "relative adjusted weights" in each LTC–DRG using the hospital-specific relative value method described above. (*See* the FY 2005 IPPS final rule (69 FR 48989–48992) for further details on the steps for calculating the LTC–DRG relative weights.)

We also adjusted the LTC–DRG relative weights to account for nonmonotonically increasing relative weights. That is, we made an adjustment if cases classified to the LTC–DRG "with comorbidities (CCs)" of a "with CC"/"without CC" pair had a lower average charge than the corresponding LTC–DRG "without CCs" by assigning the same weight to both LTC–DRGs in the "with CC"/"without CC" pair. (See August 11, 2003 IPPS final rule, 69 FR 48991–48992.) In addition, of the 520 LTC–DRGs in the LTCH PPS for FY 2005, based on the FY 2003 MedPAR data, we identified 171 LTC–DRGs for which there were no LTCH cases in the database. That is, no patients who would have been classified to those DRGs were treated in LTCHs during FY 2003 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of LTC–DRGs, we were unable to determine weights for these 171 LTC–DRGs using the method described above. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2005, we assigned relative weights to each of the 171 "no volume" LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 349 (520 − 171=349) LTC–DRGs for which we were able to determine relative weights, based on the FY 2003 claims data. (A list of the no-volume LTC–DRGs and further explanation of their relative weight assignment can be found in the FY 2005 IPPS final rule (69 FR 48992–48999).)

Furthermore, for FY 2005, we established LTC–DRG relative weights of 0.0000 for heart, kidney, liver, lung, pancreas, and simultaneous pancreas/kidney transplants (LTC–DRGs 103, 302, 480, 495, 512 and 513, respectively) because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare and presently no LTCH has been so certified. If in the future, however, a LTCH applies for certification as a Medicare-approved transplant center, we believe that the application and approval procedure would allow sufficient time for us to propose appropriate weights for the LTC–DRGs affected. At the present time, though, we included these six transplant LTC–DRGs in the GROUPER program for administrative purposes. As the LTCH PPS uses the same GROUPER program for LTCHs as is used under the IPPS, removing these DRGs would be administratively burdensome.

As we stated in the FY 2005 IPPS final rule, we will continue to use the same LTC–DRGs and relative weights for FY 2005 until October 1, 2005. Accordingly, Table 3 in the Addendum to this proposed rule lists the LTC–DRGs and their respective relative weights and arithmetic mean length of stay that we will continue to use for the period of July 1, 2005 through September 30, 2005. (This table is the same as Table 11 of the Addendum to the FY 2005 IPPS final rule (69 FR 49738–49754), including the revisions to Table 11 published in the October 7, 2004 correction notice (69 FR 60267–60271)). As we noted above, the next update to the ICD–9–CM coding system will be presented in the FY 2006 IPPS proposed rule (since there were no April 1 updates to the ICD–9–CM coding system) and the final DRGs and GROUPER for FY 2006 that will be used for the IPPS and the LTCH PPS, effective October 1, 2005, will be presented in the IPPS FY 2006 proposed and final rule in the **Federal Register**.

Accordingly, we will notify LTCHs of the revised LTC–DRG relative weights for use in determining payments for discharges occurring between October 1, 2005 and September 30, 2006 (unless there is an April 1, 2006 update to the ICD–9–CM coding system, as discussed above), based on the final DRGs and the applicable GROUPER version that will be established in FY 2006 IPPS final rule.

IV. Proposed Changes to the LTCH PPS Rates and Proposed Changes in Policy for the 2006 LTCH PPS Rate Year

[If you choose to comment on issues in this section, please include the caption "PROPOSED CHANGES TO LTCH PPS RATES AND POLICY FOR THE 2006 LTCH PPS RATE YEAR" at the beginning of your comments.]

A. Overview of the Development of the Payment Rates

The LTCH PPS was effective for a LTCH's first cost reporting period beginning on or after October 1, 2002. Effective with that cost reporting period, LTCHs are paid, during a 5-year transition period, on the basis of an increasing proportion of the LTCH PPS Federal rate and a decreasing proportion of a hospital's payment under reasonable cost-based payment system, unless the hospital makes a one-time election to receive payment based on 100 percent of the Federal rate (*see* § 412.533). New LTCHs (as defined at § 412.23(e)(4)) are paid based on 100 percent of the Federal rate, with no phase-in transition payments.

The basic methodology for determining LTCH PPS Federal prospective payment rates is set forth in the regulations at §§ 412.515 through 412.532. Below we discuss the proposed factors that would be used to update the LTCH PPS standard Federal rate for the 2006 LTCH PPS rate year that would be effective for LTCHs discharges occurring on or after July 1, 2005 through June 30, 2006. When we implemented the LTCH PPS in the August 30, 2002 LTCH PPS final rule (67 FR 56029–56031), we computed the LTCH PPS standard Federal payment rate for FY 2003 by updating the best available (FY 1998 or FY 1999) Medicare inpatient operating and capital costs per case data, using the excluded hospital market basket.

Section 123(a)(1) of Pub. L. 106–113 requires that the PPS developed for LTCHs be budget neutral. Therefore, in calculating the standard Federal rate under § 412.523(d)(2), we set total estimated LTCH PPS payments equal to estimated payments that would have been made under the reasonable cost-based payment methodology had the PPS for LTCHs not been implemented. Section 307(a) of Pub. L. 106–554 specified that the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of Pub. L. 106–554 shall not be taken into account in the development and implementation of the LTCH PPS. Furthermore, as specified at § 412.523(d)(1), the standard Federal rate is reduced by an adjustment factor to account for the estimated proportion of outlier payments under the LTCH PPS to total LTCH PPS payments (8 percent). For further details on the development of the FY 2003 standard Federal rate, see the August 30, 2002 LTCH PPS final rule (67 FR 56027–56037), for the 2004 LTCH PPS rate year rate, see the June 6, 2003 final rule (68

FR 34122–34190), and for the 2005 LTCH PPS rate year rate, see the May 7, 2004 LTCH PPS final rule (69 FR 25674–25748). Under the existing regulations at § 412.523(c)(3)(ii), we update the standard Federal rate annually to adjust for the most recent estimate of the projected increases in prices for LTCH inpatient hospital services. The proposed update to the standard Federal rate for the 2006 LTCH PPS rate year is discussed below.

B. Proposed Update to the Standard Federal Rate for the 2006 LTCH PPS Rate Year

As established in the May 7, 2004 LTCH PPS final rule (69 FR 25683), based on the most recent estimate of the excluded hospital with capital market basket, adjusted to account for the change in the LTCH PPS rate year update cycle, the current LTCH PPS standard Federal rate which is effective from July 1, 2004 through June 30, 2005 (the 2005 LTCH PPS rate year), is $36,833.69.

In the discussion that follows, we explain how we developed the proposed standard Federal rate for the 2006 LTCH PPS rate year. The proposed standard Federal rate for the 2006 LTCH PPS rate year would be calculated based on the update factor of 1.031. Thus, the proposed standard Federal rate for the 2006 LTCH PPS rate year would increase 3.1 percent compared to the 2005 LTCH PPS rate year standard Federal rate due to the proposed update to the LTCH PPS Federal rate.

1. Proposed Standard Federal Rate Update

Under § 412.523, the annual update to the LTCH PPS standard Federal rate must be equal to the percentage change in the excluded hospital with capital market basket (described in further detail below). As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56087), in the future we may propose to develop a framework to update payments to LTCHs that would account for other appropriate factors that affect the efficient delivery of services and care provided to Medicare patients. As we discussed in the May 7, 2004 final rule (69 FR 25674), because the LTCH PPS has only been implemented for slightly more than 2 years (that is, for cost reporting periods beginning on or after October 1, 2002), we have not yet collected sufficient data to allow for the analysis and development of an update framework under the LTCH PPS. Therefore, we are not addressing an update framework for the 2006 LTCH PPS rate year in this proposed rule. However, we note that a conceptual basis for the proposal of developing an update framework in the future can be found in Appendix B of the August 30, 2002 LTCH PPS final rule (67 FR 56086–56090).

a. *Description of the Proposed Market Basket for LTCHs for the 2006 LTCH PPS Rate Year.* A market basket has historically been used in the Medicare program to account for price increases of the services furnished by providers. The market basket used for the LTCH PPS includes both operating and capital-related costs of LTCHs because the LTCH PPS uses a single payment rate for both operating and capital-related costs. The development of the LTCH PPS standard Federal rate is discussed in further detail in the August 30, 2002 LTCH PPS final rule (67 FR 56027–56037).

Under the reasonable cost-based payment system, the excluded hospital market basket was used to update the hospital-specific limits on payment for operating costs of LTCHs. Currently, the excluded hospital market basket is based on operating costs from cost report data from FY 1997 and includes data from Medicare-participating long-term care, rehabilitation, psychiatric, cancer, and children's hospitals. Since LTCHs' costs are included in the excluded hospital market basket, this market basket index, in part, also reflects the costs of LTCHs. However, in order to capture the total costs (operating and capital-related) of LTCHs, we added a capital component to the excluded hospital market basket for use under the LTCH PPS. We refer to this index as the excluded hospital with capital market basket.

As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56016 and 56086), beginning with the implementation of the LTCH PPS in FY 2003, the excluded hospital with capital market basket, based on FY 1992 Medicare cost report data, has been used for updating payments to LTCHs. In the May 7, 2004 LTCH PPS final rule (69 FR 25683), we revised and rebased the excluded hospital with capital market basket, using more recent data, that is, using FY 1997 base year data beginning with the 2004 LTCH PPS rate year. (For further details on the development of the FY 1997-based LTCH PPS market basket, *see* the May 7, 2004 LTCH PPS final rule (69 FR 25683)).

In the August 30, 2002 LTCH PPS final rule (67 FR 56016 and 56085–56086), we discussed why we believe the excluded hospital with capital market basket provides a reasonable measure of the price changes facing LTCHs. In the May 7, 2004 LTCH PPS final rule (69 FR 25682–25683), we discussed our research into the feasibility of developing a market basket specific to LTCH services. However, based on this research, we did not develop a market basket specific to LTCH services. In that same final rule, we explained why we continue to believe that the excluded hospital with capital market basket is the appropriate market basket for the LTCH PPS.

For the reasons discussed in those final rules (August 30, 2002 and May 7, 2004), we continue to believe that an excluded hospital with capital market basket adequately reflects the price changes facing LTCHs. Therefore, in this proposed rule, we are proposing to continue to use the FY 1997-based excluded hospital with capital market basket as the LTCH PPS market basket for determining the proposed update to the LTCH PPS standard Federal rate for the 2006 LTCH PPS rate year. We continue to solicit comments about issues particular to LTCHs that should be considered in relation to the FY 1997-based excluded hospital with capital market basket and to encourage suggestions for additional data sources that may be available.

b. *Proposed LTCH Market Basket Increase for the 2006 LTCH Rate Year.* As we discussed in the May 7, 2004 LTCH PPS final rule (69 FR 25683), for the update to the 2005 LTCH PPS rate year, we calculated the estimated increase between the 2004 LTCH PPS rate year (July 1, 2003 through June 30, 2004) and the 2005 LTCH PPS rate year (July 1, 2004 through June 30, 2005) based on Global Insight's forecast of the revised and rebased FY 1997-based excluded hospital with capital market basket using data available through the fourth quarter of 2003. The market basket for the 2005 LTCH PPS rate year was 3.1 percent (69 FR 25683). Consistent with our historical practice of estimating market basket increases based on Global Insight's forecast of the FY 1997-based excluded hospital with capital market basket using more recent data through the third quarter of 2004, we are proposing a 3.1 percent update to the Federal rate for the 2006 LTCH PPS rate year. In accordance with § 412.523, this proposed update would represent the most recent estimate of the increase in the excluded hospital with capital market basket for the 2006 LTCH PPS rate year.

2. Proposed Standard Federal Rate for the 2006 LTCH PPS Rate Year

In the May 7, 2004 LTCH PPS final rule (69 FR 25683), we established a standard Federal rate of $36,833.69 for the 2005 LTCH PPS rate year that was

based on the best available data and policies established in that final rule.

In this proposed rule, in accordance with § 412.523, we are proposing to establish a standard Federal rate of $37,975.53 based on the most recent estimate of the LTCH PPS market basket of 3.1 percent. Since the proposed standard Federal rate for the 2006 LTCH PPS rate year has already been adjusted for differences in case-mix, wages, cost-of-living, and high-cost outlier payments, we are not proposing to make any additional adjustments in the proposed standard Federal rate for these factors.

C. Proposed Calculation of Proposed LTCH Prospective Payments for the 2006 LTCH PPS Rate Year

The basic methodology for determining prospective payment rates for LTCH inpatient operating and capital-related costs is set forth in § 412.515 through § 412.532. In accordance with § 412.515, we assign appropriate weighting factors to each LTC–DRG to reflect the estimated relative cost of hospital resources used for discharges within that group as compared to discharges classified within other groups. The amount of the prospective payment is based on the standard Federal rate, established under § 412.523, and adjusted for the LTC–DRG relative weights, differences in area wage levels, cost-of-living in Alaska and Hawaii, high-cost outliers, and other special payment provisions (short-stay outliers under § 412.529 and interrupted stays under § 412.531).

In accordance with § 412.533, during the 5-year transition period, payment is based on the applicable transition blend percentage of the adjusted Federal rate and the reasonable cost-based payment rate unless the LTCH makes a one-time election to receive payment based on 100 percent of the Federal rate. A LTCH defined as "new" under § 412.23(e)(4) is paid based on 100 percent of the Federal rate with no blended transition payments (§ 412.533(d)). As discussed in the August 30, 2002 final rule (67 FR 56038), and in accordance with § 412.533(a), the applicable transition blends are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	Reasonable cost-based payment rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

Accordingly, for cost reporting periods beginning during FY 2005 (that is, on or after October 1, 2004, and before September 30, 2005), blended payments under the transition methodology are based on 40 percent of the LTCH's reasonable cost-based payment rate and 60 percent of the adjusted LTCH PPS Federal rate. For cost reporting periods that begin during FY 2006 (that is, on or after October 1, 2005 and before September 30, 2006), blended payments under the transition methodology will be based on 20 percent of the LTCH's reasonable cost-based payment rate and 80 percent of the adjusted LTCH PPS Federal rate.

1. Proposed Adjustment for Area Wage Levels

a. *Background.* Under the authority of section 307(b) of Pub. L. 106–554, we established an adjustment to the LTCH PPS Federal rate to account for differences in LTCH area wage levels at § 412.525(c). The labor-related share of the LTCH PPS Federal rate, estimated by the excluded hospital with capital market basket, is adjusted to account for geographic differences in area wage levels by applying the applicable LTCH PPS wage index. The applicable LTCH PPS wage index is computed using wage data from inpatient acute care hospitals without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act. Furthermore, as we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56015–56019), we established a 5-year transition to the full wage adjustment. The applicable wage index phase-in percentages are based on the start of a LTCH's cost reporting period as shown in the following table:

Cost reporting periods beginning on or after	Phase-in percentage of the full wage index (percent)
October 1, 2002	1/5th (20).
October 1, 2003	2/5ths (40).
October 1, 2004	3/5ths (60).
October 1, 2005	4/5ths (80).
October 1, 2006	5/5ths (100).

For example, for cost reporting periods beginning on or after October 1, 2004 and before September 30, 2005 (FY 2005), the applicable LTCH wage index value is three-fifths of the applicable full LTCH PPS wage index value. Similarly, for cost reporting periods beginning on or after October 1, 2005 and before September 30, 2006 (FY 2006), the applicable LTCH wage index value will be four-fifths of the applicable full LTCH PPS wage index value. As we established in the August 30, 2002 LTCH PPS final rule (67 FR 56018), the applicable full LTCH PPS wage index value is calculated from acute-care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act.

In that same final rule (67 FR 56018), we stated that we would continue to reevaluate LTCH data as they become available and would propose to adjust the phase-in if subsequent data support a change. As we discussed in the May 7, 2004 LTCH PPS final rule (69 FR 25674), because the LTCH PPS has only been recently implemented (slightly over 2 years) and because of the lag time in availability of cost report data, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of the appropriateness of adjusting the phase-in. However, we have reviewed the most recent data (FY 2001–FY 2003) available and did not find any evidence to support a change in the 5-year phase-in of the wage index. Specifically, our statistical analysis still does not show a significant relationship between LTCHs' costs and their geographic location. Therefore, in this proposed rule, we are not proposing a change in the phase-in of the adjustment for area wage levels under § 412.525(c).

b. *Proposed Labor-Related Share.* In the August 30, 2002 LTCH PPS final rule (67 FR 56016), we established a labor-related share of 72.885 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, postal services, and all

other labor-intensive services) and capital costs of the excluded hospital with capital market basket based on FY 1992 data. In the March 7, 2003 proposed rule (68 FR 11249–11250), in conjunction with our revision and rebasing of the excluded hospital with capital market basket from a FY 1992 to a FY 1997 base year, we discussed revising the labor-related share based on the relative importance of the labor-related share of operating and capital costs of the excluded hospital with capital market basket based on FY 1997 data. However, in the June 6, 2003 final rule (68 FR 34142), while we adopted the revised and rebased FY 1997-based LTCH PPS market basket as the LTCH PPS update factor for the 2004 LTCH PPS rate year, we decided not to update the labor-related share under the LTCH PPS pending further analysis of the current labor share methodology.

In the August 1, 2002 IPPS final rule, we did not update the IPPS or excluded hospital labor-related shares for FY 2003 (67 FR 50041–50042), and we discussed our research into the appropriateness of this policy. Specifically, we discussed the methods that we were reviewing for establishing the labor-related share and our intention to continue to explore all options for alternative data and a methodology for determining the labor-related share. We also stated that we would propose to update the IPPS and excluded hospital labor-related shares, if necessary, once our research is complete.

As we discussed in greater detail in the May 7, 2004 LTCH PPS final rule (69 FR 25685–25686), the LTCH PPS was modeled after the IPPS for short-term, acute care hospitals. Specifically, the LTCH PPS uses the same patient classification system (CMS–DRGs) as the IPPS, and many of the case-level and facility-level adjustments explored or adopted for the LTCH PPS are payment adjustments under the IPPS (69 FR 25686). In fact, LTCHs are certified as acute care hospitals to participate as a hospital in the Medicare program, and in general, qualify for payment under the LTCH PPS instead of the IPPS solely because their Medicare inpatient average length of stay is greater than 25 days (69 FR 25686). In addition, prior to qualifying as a LTCH, hospitals generally are paid under the IPPS during the period in which they demonstrate that they have an average Medicare inpatient length of stay of greater than 25 days (69 FR 25686).

The primary reason that we did not update the LTCH PPS labor-related share for the 2004 and 2005 LTCH PPS rate years was the same reason that we explained for not updating the labor-related share under the IPPS for FY 2004 (see August 1, 2003; 68 FR 27226) and FY 2005 (see FY 2005 IPPS final rule (69 FR 49069)), which are equally applicable to the LTCH PPS. As we noted above, and as we explained in the May 7, 2004 LTCH PPS final rule (69 FR 5686), we did not revise the labor-related share under the IPPS based on the revised and rebased FY 1997 hospital market basket and the excluded hospital market basket because of data and methodological concerns. We indicated that we would conduct further analysis to determine the most appropriate methodology and data for determining the labor-related share.

The IPPS labor-related share of 71.066 percent was established in the August 29, 1997 IPPS final rule (62 FR 45995), effective for IPPS discharges occurring on or after October 1, 1997 (FY 1998). This (71.066 percent) is the most recent estimate of "the proportion (as estimated by CMS from time to time) of Federal rates" under the IPPS adjusted to account for different area wage levels and labor-related costs (§ 412.62(k)). As also explained in the August 29, 1997 IPPS final rule (62 FR 45995), the labor-related portion of the IPPS operating standardized amounts is determined by summing the labor-related items of the revised 1992-based operating prospective payment hospital market basket (that is, wages and salaries, employee benefits, professional fees, business services, computer and data processing services, postage, and all other labor intensive services). This is the same methodology used to determine the operating portion of the current LTCH PPS labor-related share established in the August 30, 2002 LTCH PPS final rule (67 FR 56016), which is effective for LTCH PPS discharges occurring in cost reporting periods beginning on or after October 1, 2002 (FY 2003). (Note, as discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56016), because the LTCH PPS standard Federal rate includes both operating and capital costs, the LTCH PPS labor-related share includes the labor-related share of capital costs as well as the labor-related share of operating costs.)

As noted above, the IPPS labor-related share of 71.066 percent became effective for IPPS discharges occurring on after October 1, 1997. As we also discussed in the May 7, 2004 LTCH PPS final rule (69 FR 25686), for purposes of payment under the IPPS, section 403 of Pub. L. 108–173 amended section 1886(d) of the Act to provide that for discharges occurring on or after October 1, 2004, the Secretary must employ 62 percent as the labor-related share under the IPPS, unless this "would result in lower payments to a hospital than would otherwise be made." That is, beginning in FY 2005 under the IPPS, the labor-related share remains 71.066 percent for acute-care hospitals with a wage index greater than 1.0, while the labor-related share is equal to 62 percent for acute-care hospitals under the IPPS with a wage index less than or equal to 1.0 (69 FR 49070). This alternative labor-related share is only applicable to acute care hospitals paid under the IPPS and does not apply to LTCHs.

The current LTCH PPS labor share (72.885 percent) was developed using the same methodology used to develop the existing IPPS labor share (71.066). The statutory alternative (62 percent) is limited to acute care hospitals paid under the IPPS and does not apply to hospitals paid under the LTCH PPS. Since we had not yet completed the research of the labor-share methodology used to establish the current IPPS labor-related share estimated by CMS from time (71.066 percent) and the current LTCH PPS labor-related share (72.885 percent), we did not change the LTCH PPS labor-share for the 2005 LTCH PPS rate year.

Since we are continuing our research into updating the hospital labor-related share and because we have not implemented a change in the methodology for determining both the existing IPPS labor-related share estimated by CMS from time to time (as discussed in the FY 2005 IPPS final rule (69 FR 49069–49070)) and the current LTCH PPS labor-related share, we are not proposing to change the LTCH PPS labor-related share at this time. Accordingly, we are proposing that the labor-related share for the 2006 LTCH PPS rate year remain at 72.885 percent. As is the case under the IPPS, once our research on the labor-related share is complete, any future revisions to the LTCH PPS labor-related share will be proposed and subject to public comment in a future rule.

c. *Proposed Revision of LTCH PPS Geographic Classifications.* As discussed in the August 30, 2002 LTCH PPS final rule, which implemented the LTCH PPS (67 FR 56015), in establishing an adjustment for area wage levels under § 412.525(c), the labor-related portion of a LTCH's Federal prospective payment is adjusted by using an appropriate wage index. As set forth in § 412.525(c), a LTCH's wage index is determined based on the location of the LTCH in an urban or rural area as defined in § 412.62(f)(1)(ii) and (f)(1)(iii), respectively. An urban area, under the LTCH PPS, is defined at § 412.62(f)(1)(ii)(A) and (B). In general,

an urban area is defined as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) as defined by the Office of Management and Budget (OMB). (In addition, a few counties located outside of MSAs are considered urban as specified at § 412.62(f)(1)(ii)(B).) Under § 412.62(f)(1)(iii), a rural area is defined as any area outside of an urban area. The geographic classifications defined in § 412.62(f)(1)(ii) and (f)(1)(iii), respectively, were used under the IPPS from FYs 1984 through 2004 (§§ 412.62(f) and 412.63(b)), and have been used under the LTCH PPS since it was implemented for cost reporting periods beginning on or after October 1, 2002 (FY 2003).

Under the IPPS, the wage index is calculated and assigned to hospitals on the basis of the labor market area in which the hospital is located or geographically reclassified to in accordance with sections 1886(d)(8) and (d)(10) of the Act. Under the LTCH PPS, the wage index is calculated using IPPS wage index data (as discussed below in section IV.C.1.d of this preamble) on the basis of the labor market area in which the hospital is located, but without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The applicable LTCH wage index value is assigned to a LTCH on the basis of the labor market area in which the LTCH is geographically located.

The current LTCH PPS labor market areas are defined based on the definitions of MSAs, Primary MSAs (PMSAs), and NECMAs issued by the OMB (commonly referred to collectively as "MSAs"). These MSA definitions, which are discussed in greater detail below, are currently used under the LTCH PPS and other non-IPPS prospective payment systems (that is, the inpatient rehabilitation facility PPS (IRF PPS), the inpatient psychiatric facility PPS (IPF PPS), the home health agency PPS (HHA PPS), and the skilled nursing facility PPS (SNF PPS)). In the FY 2005 IPPS final rule (67 FR 49026–49034), revised labor market area definitions were adopted under the IPPS (§ 412.64(b)), which were effective October 1, 2004. These new standards, called Core-Based Statistical Areas (CBSAs), were announced by the OMB late in 2000 and are discussed in greater detail below.

1. *Current LTCH PPS Labor Market Areas Based on MSAs.* Below, we will provide a description of the current labor markets that have been used for area wage adjustments under the LTCH PPS since its implementation for cost reporting periods beginning on or after October 1, 2002. Previously, we have not described the labor market areas used under the LTCH PPS in detail, although we have published each area's wage index in tables, in the LTCH PPS final rules, each year and noted the use of the geographic area (MSA) in applying the wage index adjustment in LTCH PPS payment examples in the final regulation implementing the LTCH PPS (August 30, 2002 67 FR 56037–56038). The LTCH industry has also understood that the same labor market areas in use under the IPPS (from the time LTCH PPS was implemented, for cost reporting periods beginning on or after October 1, 2002) would be used under the LTCH PPS. Because OMB has adopted new statistical area definitions (as discussed in greater detail below) and we are proposing to adopt new labor market area definitions based on these areas under the LTCH PPS (as discussed in greater detail below), we believe it is helpful to provide a more detailed description of the current LTCH PPS labor market areas, in order to better understand the proposed change to the LTCH PPS labor market areas presented below in this proposed rule.

As mentioned earlier, since the implementation of the LTCH PPS in the August 30, 2002 LTCH PPS final rule, we have used labor market areas to further characterize urban and rural areas as determined under § 412.62(f)(1)(ii) and (iii). To this end, we have defined labor market areas under the LTCH PPS based on the definitions of MSAs, PMSAs, and NECMAs issued by the OMB, which is consistent with the IPPS approach. The OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the wage index, we use the PMSAs rather than CMSAs because they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA.

These different designations use counties as the building blocks upon which they are based. Therefore, under the LTCH PPS, hospitals are assigned to either an MSA, PMSA, or NECMA based on whether the county in which the LTCH is located is part of that area. All of the counties in a State outside a designated MSA, PMSA, or NECMA are designated as rural. Specifically, for purposes of calculating the wage index, we currently combine all of the counties in a State outside a designated MSA, PMSA, or NECMA together to calculate the statewide rural wage index for each State. The labor market area definitions currently used under the LTCH PPS are the same as those used for acute care inpatient hospitals under the IPPS prior to FY 2005 (69 FR 49026).

2. *Core-Based Statistical Areas.* The OMB reviews its Metropolitan Area (MA) definitions preceding each decennial census. As discussed in the FY 2005 IPPS final rule (69 FR 49027), in the fall of 1998, the OMB chartered the Metropolitan Area Standards Review Committee to examine the MA standards and develop recommendations for possible changes to those standards. Three notices related to the review of the standards, providing an opportunity for public comment on the recommendations of the Committee, were published in the **Federal Register** on the following dates: December 21, 1998 (63 FR 70526); October 20, 1999 (64 FR 56628); and August 22, 2000 (65 FR 51060).

In the December 27, 2000 **Federal Register** (65 FR 82228–82238), the OMB announced its new standards. In that notice, the OMB defines a Core-Based Statistical Area (CBSA), beginning in 2003, as "a geographic entity associated with at least one core of 10,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. The standards designate and define two categories of CBSAs: MSAs and Micropolitan Statistical Areas." (65 FR 82236)

According to the OMB, MSAs are based on urbanized areas of 50,000 or more population, and Micropolitan Statistical Areas (referred to in this discussion as Micropolitan Areas) are based on urban clusters of at least 10,000 population, but less than 50,000 population. Counties that do not fall within CBSAs (either MSAs or Micropolitan Areas) are deemed "Outside CBSAs." In the past, the OMB defined MSAs around areas with a minimum core population of 50,000, and smaller areas were "Outside MSAs." On June 6, 2003, the OMB announced the new CBSAs, comprised of MSAs and the new Micropolitan Areas based on Census 2000 data. (A copy of the announcement may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/fy04/b04–03.html.*) The new CBSA designations recognize 49 new MSAs and 565 new Micropolitan Areas, and extensively revise the composition of many of the existing MSAs. There are 1,090 counties in MSAs under the new CBSA designations (previously, there were 848

counties in MSAs). Of these 1,090 counties, 737 are in the same MSA as they were prior to the change in designations, 65 are in a different MSA, and 288 were not previously designated to any MSA. There are 674 counties in Micropolitan Areas. Of these, 41 were previously in an MSA, while 633 were not previously designated to an MSA. There are five counties that previously were designated to an MSA but are no longer designated to either an MSA or a new Micropolitan Area: Carter County, KY; St. James Parish, LA; Kane County, UT; Culpepper County, VA; and King George County, VA. For a more detailed discussion of the conceptual basis of the new CBSAs, refer to the FY 2005 IPPS final rule (67 FR 49026–49034).

3. *Proposed Revision of the LTCH PPS Labor Market Areas.* In its June 6, 2003 announcement, the OMB cautioned that these new definitions "should not be used to develop and implement Federal, State, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes. These areas should not serve as a general-purpose geographic framework for nonstatistical activities, and they may or may not be suitable for use in program funding formulas."

As discussed in the FY 2005 IPPS final rule (69 FR 49027), we have previously examined alternatives to the use of MSAs for the purpose of establishing labor market areas for Medicare wage indices in general. For purposes of the proposed changes to the LTCH PPS labor market areas, we examined the same alternatives to the use of MSAs as examined under the IPPS. In the May 27, 1994, IPPS proposed rule (59 FR 27724), we presented our latest research concerning possible future refinements to the labor market areas. Specifically, we discussed and solicited comment on the proposal by the Prospective Payment Assessment Commission (ProPAC), a predecessor organization to the Medicare Payment Advisory Commission (MedPAC), for hospital-specific labor market areas based on each hospital's nearest neighbors, and our research and analysis on alternative labor market areas. Even though we found that none of the alternative labor market areas that we studied provided a distinct improvement over the use of MSAs, we presented an option using the MSA-based wage index, but generally giving a hospital's own wages a higher weight than under the current system. We also described for comment a State labor market option, under which hospitals would be allowed to design labor market areas within their own State boundaries.

We described the comments we received in the June 2, 1995 IPPS proposed rule (60 FR 29219). Specifically, as we discussed in that same proposed rule, there was no consensus among the commenters on the choice for new labor market areas. Many individual hospitals that commented on that proposed rule expressed dissatisfaction with all of the proposals. However, several State hospital associations that commented on that proposed rule stated that the options merited further study. Therefore, at that time we contacted the association representatives that participated in our November 1993 meeting on labor market issues in which we solicited ideas for additional types of labor market research to conduct. None of the individuals we contacted suggested any ideas for further research. After considering these same options for the LTCH PPS, we conclude that there is no basis for believing that either the nearest neighbor option or the State labor market option would result in a wage index adjustment that would be more appropriate for LTCHs than the MSA-based wage index adjustment. As discussed in the June 2, 1995 IPPS proposed rule (60 FR 29219), these options could inappropriately reward the highest cost hospitals with higher wage indexes and there would likely be less than full consent by hospitals to participate in the alternative options, particularly if hospitals face lower reimbursement due to the change.

Consequently, consistent with the approach taken under the IPPS, we have used MSAs to define labor market areas for purposes of Medicare wage indices in the LTCH PPS since its implementation for cost reporting periods beginning on or after October 1, 2002. In fact, MSAs are also used to define labor market areas for purposes of the wage index for many of the other Medicare payment systems (for example, IRF PPS, SNF PPS, HHA PPS, Outpatient PPS, and IPF PPS). While we recognize MSAs are not designed specifically to define labor market areas, we believe they do represent a useful proxy for this purpose, and our analysis and discussion here are focused on issues related to adopting the new CBSA-based designations to define labor market areas for purposes of the IPPS and for purposes of proposing them for LTCH PPS.

Historically, Medicare prospective payment systems have utilized MA definitions developed by the OMB. The labor market areas currently used under the LTCH PPS (described above in section IV.C.1.c.1. of this preamble) are based on the MA definitions issued by the OMB. As noted above, the OMB reviews its MA definitions preceding each decennial census to reflect more recent population changes. As discussed in greater detail above in section IV.C.1.c.2., the CBSAs are the OMB's latest MA definitions based on the Census 2000 data. Because we believe that the OMB's latest MA designations more accurately reflect the local economies and wage levels of the areas in which hospitals are currently located, we adopted revised labor market area designations based on the OMB's CBSA designations under the IPPS effective October 1, 2004.

When we implemented the wage index adjustment at § 412.525(c) under the LTCH PPS in the August 30, 2002 LTCH PPS final rule (67 FR 56016), we explained that the LTCH PPS wage index adjustment was intended to reflect the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. Because we believe that the OMB's CBSA designations based on Census 2000 data reflect the most recent available geographic classifications (MA definitions), we are proposing to revise the labor market area definitions used under the LTCH PPS based on the OMB's CBSA designations to ensure that the LTCH PPS wage index adjustment most appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. Specifically, we are proposing to revise the LTCH PPS labor market definitions based on the OMB's new CBSA designations (as discussed in greater detail below) effective for LTCH PPS discharges occurring on or after July 1, 2005. Accordingly, we are proposing to revise § 412.525(c) to specify that for discharges occurring on or after July 1, 2005, the application of the wage index under the LTCH PPS would be made on the basis of the location of the facility in an urban or rural area as defined in § 412.64(b)(1)(ii)(A)–(C). (As a conforming change, we are also proposing to revise § 412.525(c) to state that the current labor area definitions in the existing § 412.525(c) would be effective for discharges occurring in cost reporting periods beginning on or after October 1, 2002 and before July 1, 2005.)

We also note that these are the same labor market area definitions (based on the OMB's new CBSA designations) implemented for acute care inpatient hospitals under the IPPS at § 412.64(b), which were effective for those hospitals

beginning October 1, 2004 as discussed in the FY 2005 IPPS final rule (69 FR 49026–49034). As discussed above in section IV.C.1.b. of this preamble, the LTCH PPS was modeled after the IPPS for short-term acute care inpatient hospitals. The similarity between the IPPS and the LTCH PPS includes the adoption in the initial implementation of the LTCH PPS of the same labor market area definitions under the LTCH PPS that existed under the IPPS at that time, as well as the use of acute care inpatient hospitals' wage data in calculating the LTCH PPS wage index. Therefore, besides reflecting the most recent available geographic classifications and, consequently, more accurately reflecting the current labor markets (which is the primary reason for proposing to adopt OMB's new CBSA-based designations), we believe that proposing to revise the LTCH PPS labor marker area definitions based on OMB's new CBSA-based designations is also consistent with our historical practice of modeling LTCH PPS policy after IPPS policy.

Below, we discuss the composition of the proposed LTCH PPS labor market areas based on the OMB's new CBSA designations. It should be noted that OMB's new CBSA designations are comprised of several county-based area definitions as explained above, which include Metropolitan Areas, Micropolitan Areas, and areas "outside CBSAs." Under the LTCH PPS, since the implementation of the LTCH PPS, we have used two types of labor market areas, urban and rural. As discussed in greater detail below, in this proposed rule, in proposing to adopt revised labor market areas under the LTCH PPS based on OMB's new CBSA-based designations, we are proposing to continue to have 2 types of labor market areas (urban and rural). In the discussion that follows, we explain our proposal to recognize Metropolitan Areas, which include New England MSAs and Metropolitan Divisions, as urban. We also explain our proposal to recognize Micropolitan Areas and areas "outside CBSAs" as rural. The following discussion will describe the proposed methodology for mapping OMB's CBSA-based designations into the LTCH PPS (urban area or rural area) format.

a. *New England MSAs.* As stated above, under the LTCH PPS, we currently use NECMAs to define labor market areas in New England, because these are county-based designations rather than the 1990 MSA definitions for New England, which used minor civil divisions such as cities and towns. Under the current MSA definitions, NECMAs provided more consistency in labor market definitions for New England compared with the rest of the country, where MSAs are county-based. Under the new CBSAs, the OMB has now defined the MSAs and Micropolitan Areas in New England on the basis of counties. The OMB also established New England City and Town Areas, which are similar to the previous New England MSAs.

In order to create consistency across all LTCH labor market areas, under the LTCH PPS, we are proposing to use the county-based areas for all MSAs in the nation, including those in New England. The OMB has now defined the New England area based on counties, creating a city- and town-based system as an alternative. We believe that adopting county-based labor market areas for the entire country except those in New England would lead to inconsistencies in our designations. Adopting county-based labor market areas for the entire country provides consistency and stability in Medicare program payment because all of the labor market areas throughout the country, including New England, would be defined using the same system (that is, counties) rather than different systems in different areas of the county, and minimizes programmatic complexity.

In addition, we have consistently employed a county-based system for New England for precisely that reason: to maintain consistency with the labor market definitions used throughout the country. Because we have never used cities and towns for defining LTCH labor market areas, employing a county-based system in New England maintains that consistent practice. We note that this is consistent with the implementation of the CBSA-based designations under the IPPS for New England (69 FR 49028). Accordingly, under the LTCH PPS we are proposing to use the New England MSAs as determined under the proposed new CBSA-based labor market area definitions in defining the proposed revised LTCH PPS labor market areas.

b. *Metropolitan Divisions.* Under the OMB's new CBSA designations, a Metropolitan Division is a county or group of counties within a CBSA that contains a core population of at least 2.5 million, representing an employment center, plus adjacent counties associated with the main county or counties through commuting ties. A county qualifies as a main county if 65 percent or more of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents is at least 0.75. A county qualifies as a secondary county if 50 percent or more, but less than 65 percent, of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents is at least .75. After all the main and secondary counties are identified and grouped, each additional county that already has qualified for inclusion in the MSA falls within the Metropolitan Division associated with the main/secondary county or counties with which the county at issue has the highest employment interchange measure. Counties in a Metropolitan Division must be contiguous. (65 FR 82236)

The construct of relatively large MSAs being comprised of Metropolitan Divisions is similar to the current construct of CMSAs comprised of PMSAs. As noted above, in the past, the OMB designated CMSAs as Metropolitan Areas with a population of one million or more and comprised of two or more PMSAs. Under the LTCH PPS, we currently use the PMSAs rather than CMSAs to define labor market areas because they comprise a smaller geographic area with potentially varying labor costs due to different local economies. We believe that CMSAs may be too large of an area with a relatively large number of hospitals, to accurately reflect the local labor costs of all of the individual hospitals included in that relatively "large" area. A large market area designation increases the likelihood of including many hospitals located in areas with very different labor market conditions within the same market area designation. This variation could increase the difficulty in calculating a single wage index that would be relevant for all hospitals within the market area designation. Similarly, we believe that MSAs with a population of 2.5 million or greater may be too large of an area to accurately reflect the local labor costs of all of the individual hospitals included in that relatively "large" area. Furthermore, as indicated above, Metropolitan Divisions represent the closest approximation to PMSAs, the building block of the current LTCH PPS labor market area definitions, and therefore, would most accurately maintain our current structuring of the LTCH PPS labor market areas. Therefore, as implemented under the IPPS (69 FR 49029), we are proposing to use the Metropolitan Divisions where applicable (as described below) under the proposed new CBSA-based labor market area definitions.

In addition to being comparable to the organization of the labor market areas under current MSA designations (that is, the use of PMSAs rather than

CMSAs), we believe that proposing to use Metropolitan Divisions where applicable (as described below) under the LTCH PPS would result in a more accurate adjustment for the variation in local labor market areas for LTCHs. Specifically, if we would recognize the relatively "larger" CBSA that comprises two or more Metropolitan Divisions as an independent labor market area for purposes of the wage index, it would be too large and would include the data from too many hospitals to compute a wage index that would accurately reflect the various local labor costs of all of the individual hospitals included in that relatively "large" CBSA. As mentioned earlier, a large market area designation increases the likelihood of including many hospitals located in areas with very different labor market conditions within the same market area designation. This variation could increase the difficulty in calculating a single wage index that would be relevant for all hospitals within the market area designation. Rather, by proposing to recognize Metropolitan Divisions where applicable (as described below) under the proposed new CBSA-based labor market area definitions under the LTCH PPS, we believe that in addition to more accurately maintaining the current structuring of the LTCH PPS labor market areas, the local labor costs would be more accurately reflected, thereby resulting in a wage index adjustment that better reflects the variation in the local labor costs of the local economies of the LTCHs located in these relatively "smaller" areas.

Below we describe where Metropolitan Divisions would be applicable under the proposed new CBSA-based labor market area definitions under the LTCH PPS.

Under OMB's new CBSA-based designations, there are 11 MSAs containing Metropolitan Divisions: Boston; Chicago; Dallas; Detroit; Los Angeles; Miami; New York; Philadelphia; San Francisco; Seattle; and Washington, D.C. Although these MSAs were also CMSAs under the prior definitions, in some cases these areas have been significantly altered. Under the current LTCH PPS MSA designations, Boston is a single NECMA. Under the proposed CBSA-based labor market area designations, it would be comprised of 4 Metropolitan Divisions. Los Angeles would go from 4 PMSAs under the current LTCH PPS MSA designations to 2 Metropolitan Divisions under the proposed CBSA-based labor market area designations because 2 MSAs became separate MSAs. The New York CMSA would go from 15 PMSAs under the current LTCH PPS MSA designations down to only 4 Metropolitan Divisions under the proposed CBSA-based labor market area designations. Five PMSAs in Connecticut under the current LTCH PPS MSA designations would become separate MSAs under the proposed CBSA-based labor market area designations, and the number of PMSAs in New Jersey under the current LTCH PPS MSA designations would go from 5 to 2, with the consolidation of 2 New Jersey PMSAs (Bergen-Passaic and Jersey City) into the New York-Wayne-White Plains, NY-NJ Division, under the proposed CBSA-based labor market area designations. In San Francisco, under the proposed CBSA-based labor market area designations, only 2 Divisions would remain where there were once 6 PMSAs some of which are now separate MSAs under the current LTCH PPS labor market area designations.

Under the current LTCH PPS labor market area designations, Cincinnati, Cleveland, Denver, Houston, Milwaukee, Portland, Sacramento, and San Juan are all designated as CMSAs, but would no longer be designated as CMSAs under the proposed CBSA-based labor market area designations. As noted previously, the population threshold to be designated a CMSA under the current LTCH PPS labor market area designations is one million. In most of these cases, counties currently in a PMSA under the current LTCH PPS labor market area designations would become separate, independent MSAs under the proposed CBSA-based labor market area designations.

c. *Micropolitan Areas.* Under the OMB's new CBSA-based designations, Micropolitan Areas are essentially a third area definition made up mostly of currently rural areas, but also include some or all of areas that are currently designated as an urban MSA. As discussed in greater detail in the FY 2005 IPPS final rule (69 FR 49029–49032), how these areas are treated would have significant impacts on the calculation and application of the wage index. Specifically, whether or not Micropolitan Areas are included as part of the respective statewide rural wage indices would impact the value of statewide rural wage index of any State that contains a Micropolitan Area because a hospital's classification as urban or rural affects which hospitals' wage data are included in the statewide rural wage index. As discussed above in section IV.C.1.c.1., we combine all of the counties in a State outside a designated urban area together to calculate the statewide rural wage index for each State.

In general, including Micropolitan Areas as part of the statewide rural labor market area would result in an increase to the statewide rural wage index because hospitals located in those Micropolitan Areas typically have higher labor costs than other rural hospitals in the State. Alternatively, as discussed in greater detail below, if Micropolitan Areas would be recognized as independent labor market areas, because there would be so few hospitals in each labor market area, the wage indices for LTCHs in those areas could become relatively unstable as they would change considerably from year to year.

Because we currently use MSAs to define urban labor market areas and we group all the hospitals in counties within each State that are not assigned to an MSA together into a statewide rural labor market area, we have used the terms "urban" and "rural" wage indexes in the past for ease of reference. However, the introduction of Micropolitan Areas by the OMB potentially complicates this terminology because these areas include many hospitals that are currently included in the statewide rural labor market areas.

We are proposing to treat Micropolitan Areas as rural labor market areas under the LTCH PPS for the reasons outlined below. That is, counties that are assigned to a Micropolitan area under the CBSA-based designations would be treated the same as other "rural" counties that are not assigned to either an MSA (Metropolitan Statistical Area) or a Micropolitan Area. Therefore, in determining a LTCH's applicable wage index (based on IPPS hospital wage index data, as discussed in greater detail below in section IV.C.d. of this preamble), we propose that a LTCH in a Micropolitan Area under the OMB's CBSA-based designations would be classified as "rural" and would be assigned the statewide rural wage index for the State in which it resides.

In the FY 2005 IPPS final rule (69 FR 49029–49032), we discuss our evaluation of the impact of treating Micropolitan Areas as part of the statewide rural labor market area instead of treating Micropolitan Areas as independent labor market areas for hospitals paid under the IPPS. As an alternative to treating Micropolitan Areas as part of the statewide rural labor market area for purposes of the LTCH PPS, we examined treating Micropolitan Areas as separate (urban) labor market areas, just as we did when implementing the revised labor market areas under the IPPS. As discussed in that same final rule, one of the reasons

Micropolitan Areas have such a dramatic impact on the wage index is, because Micropolitan Areas encompass smaller populations than MSAs, they tend to include fewer hospitals per Micropolitan Area. Currently, there are only 25 MSAs with one hospital in the MSA. However, under the new proposed CBSA-based definitions, there are 373 Micropolitan Areas with one hospital, and 49 MSAs with only one hospital.

This large number of labor market areas with only one hospital and the increased potential for dramatic shifts in the wage indexes from 1 year to the next is a problem for several reasons. First, it creates instability in the wage index from year to year for a large number of hospitals. Second, it reduces the averaging effect (This averaging effect allows for more data points to be used to calculate a representative standard of measured labor costs within a market area.) lessening some of the incentive for hospitals to operate efficiently. This incentive is inherent in a system based on the average hourly wages for a large number of hospitals, as hospitals could profit more by operating below that average. In labor market areas with a single hospital, high wage costs are passed directly into the wage index with no counterbalancing averaging with lower wages paid at nearby competing hospitals. Third, it creates an arguably inequitable system when so many hospitals have wage indexes based solely on their own wages, while other hospitals' wage indexes are based on an average hourly wage across many hospitals.

For the reasons noted above, and consistent with the treatment of these areas under the IPPS, we are proposing not to adopt Micropolitan Areas as independent labor market areas under the LTCH PPS, but instead, we propose that Micropolitan Areas, under the CBSA-based labor market area definitions, would be considered part of the statewide rural labor market area. Accordingly, we are proposing that the LTCH PPS statewide rural wage index would be determined using acute-care IPPS hospital wage data (the rational for using IPPS hospital wage data is discussed in greater detail below in section IV.C.1.d. of this preamble) from hospitals located in non-MSA areas (for example, rural areas, including Micropolitan Areas) and that statewide rural wage index would be assigned to LTCHs located in those non-MSA areas.

4. Implementation of the Proposed Revised Labor Market Areas Under the LTCH PPS

We note that, consistent with our policy under the IPPS, we are not proposing to adopt the proposed new labor market area definitions themselves in a budget neutral manner. As we discussed in the August 30, 2002 LTCH PPS final rule, under section 123 of Pub. L. 106–113, and section 307 of Pub. L. 106–554, the Secretary generally has broad authority in developing the LTCH PPS, including whether and how to make adjustments to the LTCH PPS. In that same final rule we state that we will consider whether it is appropriate for us to propose a budget neutrality adjustment in the annual update of some aspects of the LTCH PPS under our broad discretionary authority under the statute to provide "appropriate adjustments" to the LTCH PPS. Until the 5-year transition from cost-based reimbursement to prospective payment is complete, including the end of the phase-in of the wage index adjustment under § 412.525(c), we believe that it would not be appropriate to update any aspects of the LTCH PPS in a budget neutral manner. A primary reason for waiting until after the transition is complete before evaluating aspects of the LTCH PPS, including the budget neutrality issue, is that the data available to analyze such issues is very limited, because the LTCH PPS is still relatively new and there is a lag time in data availability. Also, the fact that a number of LTCHs were and some still are operating under the transition period from TEFRA to LTCH PPS may make the available data even less appropriate for an analysis, since hospitals may still be modifying their behavior based on their transition to prospective payment and our data may not yet replace any operational changes LTCHs may have made in response to prospective payment. Once the transition is complete, we will have a better opportunity to evaluate the impacts of the implementation of this new payment system based on a number of years of LTCH PPS data.

To facilitate an understanding of the proposed policies related to the proposed change to the LTCH PPS labor market areas discussed above, in Table 4 of the Addendum of this proposed rule, we are providing a listing of each LTCH's State and county location; existing labor market area designation; and its proposed new CBSA-based labor market area designation based on the best available cost report data from HCRIS (FYs 1999–2003) and county information from our OSCAR database. We encourage LTCHs to review the county location and both the current and proposed labor market area assignments for accuracy. Any questions or corrections (including additions or deletions) to the information provided in Table 4 should be emailed to the following CMS Web address: *ltchpps@cms.hhs.gov*. A link to this address can be found on the following CMS Web page *http://www.cms.hhs.gov/providers/longterm/default.asp*.

When the revised labor market areas based on the OMB's new CBSA-based designations were adopted under the acute care hospital IPPS beginning on October 1, 2004, a transition to the new labor market area designations was established due to the scope and significant implications of these new boundaries and to buffer the subsequent significant impacts it may have on payments to numerous hospitals. As discussed in the FY 2005 IPPS final rule (69 FR 49032), during FY 2005, a blend of wage indexes is calculated for those acute care IPPS hospitals experiencing a drop in their wage indexes because of the adoption of the new labor market areas. Also, as described in that same final rule (69 FR 49032), under the IPPS, hospitals that previously were located in an urban MSA, but then became rural under the new CBSA-based definitions are assigned the wage index value of the urban area to which they previously belonged, for 3 years (FYs 2005–2007).

Because the former MSA-based labor market areas used under the IPPS had been used for payment for over 10 years, we believe it was necessary to provide additional protection given the scope and potentially significant implications of these new labor market areas on numerous acute-care hospitals. Therefore, we implemented a transition under the IPPS from the former MSA-based labor market area designation to the new CBSA-based labor market area designation for acute-care hospitals that would receive a lower wage index as a result of the change in the labor market area designations.

We recognize that, just like IPPS hospitals, many LTCHs would experience decreases in their wage index as a result of the proposed labor market area changes. At the same time, a significant number of LTCHs would benefit from these proposed changes. However, because we are in the midst of a transition to a full wage-index adjustment under the LTCH PPS, we believe that the effects on the LTCH PPS wage index from the proposed changes to the LTCH PPS labor market areas definitions would be mitigated. Specifically, as noted above, most

LTCHs are presently still in their FY 2004 cost reporting period (the vast majority of LTCHs start their cost reporting periods on July 1 or September 1), and are, therefore, in the 2nd year of the 5-year phase-in of the LTCH PPS wage index adjustment, and the applicable wage index value is 2/5ths (40 percent) of the applicable full LTCH PPS wage index adjustment. Since most LTCHs are only in the 2nd year of the 5-year phase-in of the wage index adjustment, for most LTCHs, the labor-related portion of the standard Federal rate is only adjusted by 40 percent of the applicable full wage index (that is, 2/5ths wage index value). As also noted above, the LTCH PPS wage index adjustment is made by multiplying the LTCH PPS standard Federal rate by the applicable wage index value, and the current LTCH PPS labor related-share is 72.885 percent. Consequently, for most LTCHs, only 29 percent of the standard Federal rate is affected by the wage index adjustment (72.885 percent × 0.4 = 29.154 percent), and the proposed revision to the labor market area definitions based on OMB's new CBSA-based designations would only have a minimal impact on LTCH PPS payments. Therefore, we do not believe it is necessary to propose a transition policy for the proposed revision to the LTCH PPS labor market area definitions because the impact of the proposed revision to the labor market area definitions would only have a minimal impact on LTCH PPS payments (as explained above).

For the reasons discussed in greater detail below, we are not proposing a transition under the LTCH PPS from the current MSA-based labor market area designations to the new CBSA-based labor market area designations. Rather, we are proposing under the LTCH PPS to adopt the new CBSA-based labor market area definitions beginning with the 2006 LTCH PPS rate year without a transition period. As also discussed in greater detail below, we believe that this proposed policy is appropriate because despite significant similarities between the LTCH PPS and the IPPS, there are clear distinctions between the payment systems, particularly regarding wage index issues.

The most significant distinction upon which we have based this proposed policy determination is that where acute care hospitals under the IPPS have been paid using full wage index adjusted payments since 1983 and had used the previous IPPS MSA-based labor market area designations for over 10 years, under the LTCH PPS, a wage index adjustment is being phased-in over a 5-year period, and as noted above, most LTCHs are only in the 2nd year of the 5-year phase-in of the wage index adjustment (that is, LTCH cost reporting periods beginning during FY 2004 as established in the August 30, 2002 LTCH PPS final rule (67 FR 56016–56019)). As explained in greater detail above, the impact that the wage index can have on LTCH PPS payments is limited at this point, since only a small percentage of the LTCH PPS standard Federal rate is affected by the wage index (approximately 29 percent in most cases, as explained above) because of the 5-year phase-in of the wage index adjustment.

Our initial analysis of the appropriateness of including a wage index adjustment in the March 22, 2004 proposed rule for the LTCH PPS (67 FR 13465–13466) indicated that a wage adjustment did not lead to an increase in the accuracy of LTCH PPS payments because a statistical analysis did not show a significant relationship between LTCHs costs and their geographic location. However, based upon comments, we revisited this proposed determination after additional data analysis and a more general policy evaluation, and we stated that we "believe that the conceptual reasons for having an area wage adjustment support transitioning into a wage adjustment, notwithstanding the data problems and issues with the regression analysis" (*see* August 30, 2002 LTCH PPS final rule (67 FR 56018)). However, given the lack of strong empirical evidence to support a wage index adjustment under the LTCH PPS, we provided for a 5-year transition to the full implementation of the wage index adjustment. We also noted that we would "* * * continue to reevaluate LTCH data as they become available and would propose to adjust the phase-in if subsequent data support a change." In each subsequent LTCH PPS proposed and final rule since FY 2003, we have evaluated the most recent LTCH data available and still have found no empirical evidence to support a change in the 5-year phase-in of the wage index adjustment under the LTCH PPS.

Therefore, where a wage index adjustment has been a stable feature of the acute care hospital IPPS since its 1983 implementation and had utilized the prior MSA-based labor market area designation for over 10 years, this is not the case for the LTCH PPS which has only been implemented since October 1, 2002. Furthermore, as explained above, most LTCHs are presently still in their FY 2004 cost reporting period (the vast majority of LTCHs start their cost reporting periods on July 1 or September 1), and are, therefore, in the 2nd year of the 5-year phase-in of the LTCH PPS wage index adjustment, and the applicable wage index value is 2/5ths (40 percent) of the full LTCH PPS wage index adjustment. As also noted above, the LTCH PPS wage index adjustment is made by multiplying the LTCH PPS standard Federal rate by the applicable wage index value, and the current LTCH PPS labor related-share is 72.885 percent. Consequently, for most LTCHs, only 29 percent of the standard Federal rate is affected by the wage index adjustment (72.885 percent × 0.4 = 29.154 percent). Therefore, the proposed revision to the labor market area definitions based on OMB's new CBSA-based designations would only have a minimal impact on LTCH PPS payments.

Because the impact of the proposed revision to the labor market area definitions would only have a minimal impact on LTCH PPS payments (as explained above), we do not believe it is necessary to propose a transition policy for the proposed revision to the LTCH PPS labor market area definitions. In contrast, a transition policy to the revised IPPS labor market area definitions under the IPPS was appropriate because, as there is no phase-in of a wage index adjustment under the IPPS as there currently is under the LTCH PPS, the full labor-related share of either 71.066 percent or 62 percent (as discussed above in section IV.C.1.b. of this preamble) of the IPPS standardized amount (that is, Federal rate) is affected by the IPPS wage index adjustment, which resulted in a more significant projected impact for acute care hospitals under the IPPS. Furthermore, we do believe that it is necessary to further transition any proposed changes to the LTCH PPS wage index adjustment, including the proposed revision of the labor market area definitions, because, in fact, the LTCH PPS wage index adjustment is still being phased-in over 5 years as established in the August 30, 2002 final rule (67 FR 56018). Accordingly, to the extent the new CBSA-based labor market area definitions are implemented, we would not expect them to have as significant of an impact on LTCHs, as they do for IPPS hospitals since the full wage index adjustment had been a stable factor of IPPS payment for over 20 years.

An additional distinction between the IPPS and the LTCH PPS regarding the wage index adjustment is that the IPPS policies that provide for blended and hold-harmless payments during the transition from MSA-based labor market areas to CBSA-based labor market areas described above were implemented in a

budget neutral manner under the IPPS (69 FR 49034–49035 and 49275). (We note the new labor market area definitions themselves, not the transition policies that provide for blended and hold-harmless payments, under the IPPS were not adopted in a budget neutral manner (69 FR 49034). However, as noted above, wage index changes are not budget neutral under the LTCH PPS. Under the IPPS, hospitals located in areas with a lower wage index being calculated under their new CBSA designation in comparison to what they would have been assigned under the old MSA designation were given a blend consisting of 50 percent of the new CBSA wage index and 50 percent of the old MSA wage index. This essentially increases the wage index for those hospitals, which results in an increase in their payment since the blended MSA/CBSA wage index is higher than the full CBSA wage index. However, because the IPPS wage index transition payments were implemented in a budget neutral manner, it did not result in increased spending by Medicare, but rather a redistribution of dollars across IPPS acute-care hospitals. If we were to propose a similar transition under the LTCH PPS to the one implemented under the IPPS, it would result in additional LTCH spending by the Medicare program if we did so without a budget neutrality adjustment.

Therefore, given the fact that the LTCH PPS has only been implemented for hospital cost reporting periods beginning on or after October 1, 2002, (which means that payments to many LTCHs have only been governed by the LTCH PPS for slightly more than 2 years), and that even for LTCHs that are negatively affected by the new CBSA-based designations, the LTCH PPS wage index adjustment, at this point, has not been fully implemented and we do not believe that it is appropriate or necessary to propose a transition to the proposed new CBSA-based labor market areas for purposes of the LTCH PPS wage index adjustment under § 412.525(c).

In addition, we are proposing to revise § 412.525(c) to clarify the application of the current adjustment for area wage levels under the LTCH PPS, which was originally established in the August 30, 2002 final rule (67 FR 56015–56019). Specifically, we are proposing to revise § 412.525(c) to state that the labor portion of a LTCH's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index (established by CMS). The wage index reflects the relative level of hospital wages and wage-related costs in the geographic area of the hospital compared to the national average level of hospital wages and wage-related costs. Currently, urban or rural area is determined in accordance with the definitions at § 412.62(f)(1)(ii) and (iii). As we discussed above, because we are proposing to revise those definitions in this proposed rule, urban or rural area would be determined in accordance with the proposed revisions to § 412.525(c)(1) or the proposed revisions to § 412.525(c)(2), respectively. In addition, § 412.525(c) would be revised to specify that the appropriate wage index (established by CMS) is updated annually. We note that this proposed revision to the language in § 412.525(c), which codifies our existing policy into regulations, is similar to the wage index adjustment codified in regulations under the IPPS at § 412.64(h). As stated above, this proposed clarification to § 412.525(c) clearly outlines in regulations our established methodology for the application of the area wage adjustment under the LTCH PPS. As noted above, this methodology was established when we implemented the LTCH PPS (that is, cost reporting periods beginning on or after October 1, 2002) in the August 30, 2002 final rule (67 FR 56015–56019).

d. *Wage Index Data.* In the May 7, 2004 final rule (69 FR 25684–25686), we established LTCH PPS wage index values for the 2005 LTCH PPS rate year calculated from the same data (generated in cost reporting periods beginning during FY 2000) used to compute the FY 2004 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The LTCH wage index values applicable for discharges occurring on or after July 1, 2004 through June 30, 2005 are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum to that final rule. Acute care hospital inpatient wage index data is also used to establish the wage index adjustment used in the IRF PPS, IPF PPS, HHA PPS, SNF PPS, and inpatient psychiatric facility PPS (IPF). As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56019), since hospitals that are excluded from the IPPS are not required to provide wage-related information on the Medicare cost report and because we would need to establish instructions for the collection of this LTCH data in order to establish a geographic reclassification adjustment under the LTCH PPS, the wage adjustment established under the LTCH PPS is based on a LTCH's actual location without regard to the urban or rural designation of any related or affiliated provider. Thus, because complete LTCH wage-related data are not currently available on the cost report, we do not have complete LTCH wage related data to use for the purposes of creating a LTCH wage index based on LTCH wage data, and since the labor market areas of acute care hospitals under the IPPS are similar to those of LTCHs, we believe wage data of acute care IPPS hospitals accurately capture the relationship between the wage related costs for LTCHs in an area as compared to the national average. Therefore, we believe IPPS acute care hospitals' wage data are the best available data to use for the wage index under the LTCH PPS.

In this proposed rule, we are proposing that for the for the 2006 LTCH PPS rate year, acute care hospital inpatient wage index data generated from cost reporting periods beginning during FY 2001 without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act would be used to determine the applicable wage index values under the LTCH PPS because these data (FY 2001) are the most recent complete data. These data are the same FY 2001 acute care hospital inpatient wage data that were used to compute the FY 2005 wage indices currently used under the IPPS, SNF PPS, and HHA PPS. The proposed full wage index values that would be applicable for LTCH PPS discharges occurring on or after July 1, 2005 through June 30, 2006 are shown in Tables 1 and 2 in the Addendum of this proposed rule.

The proposed LTCH wage index values that would be applicable for discharges occurring on or after July 1, 2005 through June 30, 2006, are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum of this proposed rule. (We note a labeling error published in prior years wage index tables used in the LTCH PPS. That labeling error was the listing of Stanly County, NC as one of the areas under MSA 1520 when, in fact, we consider Stanly County, NC to be a rural area in North Carolina. Stanly County wage data have always been correctly treated as rural in the actual creation of the LTCH wage index values, and it has only been the listing of Stanly County under MSA 1520 in prior years LTCH PPS index tables that was in error. Consequently, Table 1a in the Addendum of this proposed rule correctly removes Stanly County from the list of areas that fall under the MSA

1520 wage index. As this is strictly a labeling correction that does not affect the actual computation of the wage index values, any LTCHs located in Stanly County, NC, will continue to fall under, and use, the wage index for rural North Carolina.)

As noted above, a listing of each LTCH's State and county location; existing MSA-based labor market area designation; and its proposed new CBSA-based labor market area designation based on the best available cost report data (FYs 1999–2003) from HCRIS and county information from our OSCAR database, are shown in Table 4 of the Addendum of this proposed rule. As we also noted earlier in this section, we encourage LTCHs to review the county location and both the current and proposed labor market area assignments for accuracy. Any questions or corrections (including additions or deletions) to the information provided in Table 4 should be e-mailed to the following CMS web address: *ltchpps@cms.hhs.gov*. A link to this address can be found on the following CMS Web page *http://www.cms.hhs.gov/providers/longterm/default.asp*.

As discussed earlier in this section (IV.C.1.a.), the applicable wage index phase-in percentages are based on the start of a LTCH's cost reporting period beginning on or after October 1 of each year during the 5-year transition period. Thus, for cost reporting periods beginning on or after October 1, 2004 and before October 1, 2005 (FY 2005), the labor portion of the standard Federal rate would be adjusted by three-fifths of the applicable LTCH wage index value. For example, for a LTCH's discharges occurring during the 2006 LTCH PPS rate year (that is, July 1, 2005 through June 30, 2006) and occurring in the LTCH's cost reporting period beginning during FY 2005, the applicable wage index value would be three-fifths of the full FY 2005 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act (shown in Tables 1 and 2 of the Addendum to this proposed rule). Similarly, for a LTCH's discharges occurring during the 2006 LTCH PPS rate year (that is, July 1, 2005 through June 30, 2006) and occurring in the LTCH's cost reporting period beginning during FY 2006, the applicable wage index value would be four-fifths of the full FY 2005 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act (shown in Tables 1 and 2 in the Addendum to this proposed rule).

Because the phase-in of the wage index does not coincide with the LTCH PPS rate year (July 1 through June 30), most LTCHs will experience a change in the wage index phase-in percentages during the LTCH PPS rate year. For example, during the 2006 LTCH PPS rate year, for a LTCH with a January 1 fiscal year, the three-fifths wage index would be applicable for the first 6 months of the 2006 LTCH PPS rate year (July 1, 2005 through December 31, 2005) and the four-fifths wage index would be applicable for the second 6 months of the 2006 LTCH PPS rate year (January 1, 2006 through June 30, 2006). We also note that some providers will still be in the second year of the 5-year phase-in of the LTCH wage index (that is, those LTCHs who began the second year of the 5-year phase-in during their cost reporting periods that began between July 1, 2004 and September 30, 2004). For the remainder of those LTCHs' FY 2004 cost reporting periods which will conclude during the first 3 months of the 2006 LTCH PPS rate year, the applicable wage index value would be two-fifths of the full FY 2005 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act as shown in Tables 1 and 2 in the Addendum to this proposed rule. Since there are no longer any LTCHs in their cost reporting period that began during FY 2003 (the first year of the 5-year wage index phase-in), we are no longer showing the ⅕th wage index value in Tables 1 and 2 in the Addendum to this proposed rule.

2. Proposed Adjustment for Cost-of-Living in Alaska and Hawaii

In the August 30, 2002 LTCH PPS final rule (67 FR 56022), we established, under § 412.525(b), a cost-of-living adjustment (COLA) for LTCHs located in Alaska and Hawaii to account for the higher costs incurred in those States. (The inadvertent omission of § 412.525(b) by the OFR noted in the May 7, 2004 LTCH PPS final rule (69 FR 25686) has been corrected in 42 CFR Parts 400 to 429 revised as of October 1, 2004) In the May 7, 2004 final rule (69 FR 25686), for the 2005 LTCH PPS rate year, we established that we make a COLA to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in Table I of that same final rule.

Similarly, in this proposed rule, for the 2006 LTCH PPS rate year we are proposing to make a COLA to payments to LTCHs located in Alaska and Hawaii by multiplying the proposed standard Federal payment rate by the proposed factors listed in Table I below. These proposed factors are obtained from the U.S. Office of Personnel Management (OPM) and are currently used under the IPPS. In addition, we propose that if the OPM releases revised COLA factors before March 1, 2005, we would use them for the development of the payments for the 2006 LTCH rate year and publish them in the LTCH PPS final rule.

TABLE I.—PROPOSED COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS FOR THE 2006 LTCH PPS RATE YEAR

Alaska:	
All areas	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.165
Kauai County	1.2325
Maui County	1.2375
Kalawao County	1.2375

3. Proposed Adjustment for High-Cost Outliers

a. *Background.* Under § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to under serve these patients. We set the outlier threshold before the beginning of the applicable rate year so that total outlier payments are projected to equal 8 percent of total payments under the LTCH PPS.

Under § 412.525(a), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and a fixed percentage of costs above the marginal cost factor. We calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge. In accordance with

§ 412.525(a), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount).

Under the LTCH PPS, we determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the LTCH will receive any additional payments. We calculate the fixed-loss amount by simulating aggregate payments with and without an outlier policy. The fixed-loss amount would result in estimated total outlier payments being projected to be equal to 8 percent of projected total LTCH PPS payments. Currently, MedPAR claims data and cost-to-charge ratios based on data from the latest available cost report data from Hospital Cost Report Information System (HCRIS) and corresponding MedPAR claims data are used to establish a fixed-loss threshold amount under the LTCH PPS.

b. *Cost-to-charge ratios (CCRs).* As we noted above, we calculate the estimate of the cost of the case used in determining LTCH PPS outlier payments by multiplying the Medicare allowable charges for the case by the LTCH's overall CCR. As we established in the June 9, 2003 IPPS high-cost outlier final rule (68 FR 34494–34515), currently (for discharges occurring on or after October 1, 2003) fiscal intermediaries (FIs) use either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the later period, to determine a LTCH's CCR. As we specified in Program Memorandum Transmittal A–02–093 when we implemented the LTCH PPS and as codified in regulation at § 412.525(a)(4)(ii), for discharges occurring on or after August 8, 2003, for LTCHs that we are unable to compute a CCR (for example, due to faulty or unavailable data), we assign the applicable statewide average CCR to the LTCH. (Currently, the applicable statewide average CCRs can be found in Tables 8A and 8B of the FY 2005 IPPS final rule (69 FR 49687–49688).)

As set forth in § 412.525(a)(4)(ii), by cross-referencing § 412.84(i)(3), currently, we apply the applicable statewide average CCR when a LTCH's CCR exceeds the maximum CCR threshold (ceiling) set forth specifically at § 412.84(i)(3)(ii). As we explained in the June 9, 2003 high cost outlier final rule (68 FR 34506–34507), CCRs above this range are probably due to faulty data reporting or entry. Therefore, these CCRs should not be used to identify and make payments for outlier cases because the data are clearly errors and should not be relied upon. We also made a similar change to the short-stay outlier policy at § 412.529. Since CCRs are also used in determining short-stay outlier payments, the rationale for that change mirrors that for high-cost outliers. (The current LTCH PPS CCR ceiling is 1.409, which is equal to the combined operating and capital CCR ceilings (as established in the FY 2005 IPPS final rule (69 FR 49287)).)

Currently, (for discharges occurring on or after August 8, 2003, only a maximum CCR threshold (ceiling) is applied to a LTCH's CCR ratio. For discharges occurring on or after August 8, 2003), a minimum CCR threshold (floor) is no longer applicable (See June 8, 2003, 68 FR 34506–34507). As discussed above, if a LTCH's cost-to-charge ratio is above the ceiling, the applicable statewide average CCR is assigned to the LTCH. However, a LTCH's CCR is no longer raised to the applicable statewide average CCR if it falls below a minimum CCR threshold (floor) for discharges occurring on or after August 8, 2003, as we discussed in the June 9, 2003 high cost outlier final rule (68 FR 34507), in order to prevent hospitals from receiving inappropriately high outlier payments. (Refer to the June 9, 2003 high-cost outlier final rule (68 FR 34507) for further explanation of the establishment of the current CCR policy.)

c. *Establishment of the Proposed Fixed-Loss Amount.* When we implemented the LTCH PPS, as discussed in the August 30, 2002 final rule (67 FR 56022–56026), we establish a fixed-loss amount so that total estimated outlier payments are projected to equal 8 percent of total estimated payments under the LTCH PPS. To determine the fixed-loss amount, we estimate outlier payments and total LTCH PPS payments for each case using claims data from the MedPAR. Specifically, to determine the outlier payment for each case, we estimate the cost of the case by multiplying the Medicare covered charges from the claim by the LTCH's hospital specific CCR. In accordance with § 412.525(a)(3), if the estimated cost of the case exceeds the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount), we pay an outlier payment equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the proposed fixed-loss amount).

In the May 7, 2004 final rule, in calculating the fixed-loss amount that would result in outlier payments projected to be equal to 8 percent of total payments for the 2005 LTCH PPS rate year, we used claims data from the December 2003 update of the FY 2003 MedPAR files, as that was the best available data at that time. We calculated LTCHs' CCRs for determining the fixed-loss amount based on the latest available cost report data in HCRIS from FYs 1999 through 2002. Also, as we explained in that same final rule (68 FR 25687), we calculated a single fixed-loss amount for the 2005 LTCH PPS rate year based on Version 21.0 of the GROUPER, which was the version in effect as of the beginning of the LTCH PPS rate year (that is, July 1, 2004 for the 2005 LTCH PPS rate year).

We also applied the current outlier policy under § 412.525(a) in determining the fixed-loss amount for the 2005 LTCH PPS rate year; that is, we assigned the applicable statewide average CCR only to LTCHs whose CCRs exceeded the ceiling (and not when they fell below the floor). Accordingly, we used the FY 2004 IPPS combined operating and capital CCR ceiling of 1.366 (as explained in the IPPS final rule, published August 1, 2003 (68 FR 45346)). As we explained in that same final rule, we believe that using the FY 2004 combined IPPS operating and capital CCR ceiling for LTCHs is appropriate for the same reasons we stated above regarding the use of the FY 2004 combined operating and capital CCR ceiling under the IPPS.

For the 2005 LTCH PPS rate year, in the May 7, 2004 final rule (69 FR 25689), we established a fixed-loss amount of $17,864. Thus, in the 2005 LTCH PPS rate year we pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH PPS payment for the LTC–DRG and the fixed-loss amount of $17,864).

In this proposed rule, we are not proposing a change in our established methodology for determining the fixed-loss amount. However, we are proposing to use more recently available data to determine the proposed fixed-loss amount for the 2006 LTCH PPS rate year, including the most recent available claims data and data from the Provider Specific File (PSF). Specifically, for the 2006 LTCH PPS rate year, we are proposing to use the September 2004 update of the FY 2003 MedPAR claims data to determine a proposed fixed-loss amount that would result in projected outlier payments being equal to 8 percent of total projected LTCH PPS

payments, based on the policies described in this proposed rule, because these data are the best LTCH data available. As noted above, we determined the proposed fixed-loss amount based on the version of the GROUPER that would be in effect as of the beginning of the 2006 LTCH PPS rate year (July 1, 2005), that is, Version 22.0 of the LTCH PPS GROUPER (69 FR 48982).

As we explained above, in determining the LTCH PPS fixed-loss amount, CCRs are used to estimate the cost of each case by multiplying the Medicare covered charges from the claim by the LTCH's CCR. Rather than using CCRs calculated from the latest available cost report data in HCRIS and corresponding claims data from the MedPAR data as we did when we determined the 2005 LTCH PPS rate year fixed-loss amount (as noted above), in this proposed rule, for purposes of determining the proposed fixed-loss amount for the 2006 LTCH PPS rate year, we are proposing to use CCRs from the PSF as they are the best available data for the LTCH PPS because, as we discuss in greater detail below, they are more recent data and were actually used to make LTCH PPS payment.

The PSF contains CCRs computed by FIs in accordance with Program Memorandum Transmittal A–02–093 and Program Memorandum Transmittal A–03–058, which reflects the changes made in the June 9, 2003 high-cost outlier final rule (68 FR 34494), including the use of either the most recently settled or tentatively settled cost report, whichever is later, to determine a LTCH's CCR. This also includes the assignment of the applicable statewide average CCR by the FI in cases where the FI was unable to compute a CCR (for example, due to faulty or unavailable data), or the CCR computed by the FI exceeded the applicable CCR ceiling. While FIs have been determining a CCR for each LTCH and entering them on the PSF (as instructed in Program Transmittal A–02–093) in order to determine the LTCH PPS payment for each discharge using the LTCH PPS PRICER software, we have only recently had access to the complete PSF data for all LTCHs due to the lag time in data availability (the LTCH PPS has only been implemented for slightly over 2 years, that is cost reporting periods beginning on or after October 1, 2002). Thus, this is the first opportunity that we have had to use CCRs from the PSF in determining the fixed-loss amount.

We are proposing to use CCRs from the PSF rather than computing CCRs from the latest MedPAR claims data and corresponding cost report data for purposes of determining the proposed fixed-loss amount under the LTCH PPS because we believe that using these CCRs to estimate the cost of the case used determining outlier payments would be more accurate than they would be using our current source for obtaining CCRs to estimate the fixed-loss amount (that is, calculating CCRs from the latest cost report data in HCRIS and corresponding claims data in the MedPAR files, as explained above). Specifically, as we discuss in greater detail below, CCRs in the PSF are based on the most recently settled or tentatively settled cost report, whichever is later, where as the CCRs computed from HCRIS and corresponding MedPAR data are several years old due to the lag time in data availability. Increasing the accuracy of estimated outlier payments in determining the fixed-loss amount by using CCRs from the PSF rather than CCRs computed from HCRIS and corresponding MedPAR data would help ensure that outlier payments are projected to equal 8 percent of total LTCH PPS payments as we established in the August 30, 2002 final rule (67 FR 56026). Using CCRs from the PSF should result in a more precise fixed-loss amount because these CCRs are based on more recent available data and, as explained above, these are the CCRs actually used by FIs to make LTCH PPS payments using the LTCH PPS PRICER software.

Specifically, for purposes of determining the proposed 2006 LTCH PPS rate year fixed-loss amount, we are proposing to use CCRs from the June 2004 update of the PSF, which are the CCRs that were used by FIs to make LTCH PPS payments to LTCHs as of June 30, 2004. As noted above, the CCRs in this file also reflect the changes to the CCR and outlier policy made in the June 9, 2003 high cost outlier final rule (68 FR 34494), which includes the use of either the most recently settled or tentatively settled cost reports, whichever is later, by FIs to determine a LTCHs CCR.

In addition, because all LTCHs paid under the LTCH PPS have an entry in the PSF, for all of the LTCHs with claims in the September 2004 update of the Fy 2003 MedPAR files (which we used to determine the proposed fixed-loss amount), there were no LTCHs with missing CCRs, and, therefore, there was no need to assign the applicable statewide average CCR to any LTCHs in determining the proposed fixed-loss amount (unless this was already done by the FI when entering the CCR in the PSF). This results in a more accurate CCR for each LTCH, and therefore a more accurate estimate of the cost of each case for LTCHs that, in the past, were assigned the applicable statewide average CCR in determining the fixed-loss amount because the data needed to compute a CCR were unavailable. (We note that consistent with our established methodology for determining CCRs for the purposes of determining the fixed-loss amount, if, in the future, a LTCH were missing a CCR in the PSF, we would assign the applicable statewide average CCR.)

We believe that CCRs from the PSF are a better approximation of the CCRs that would be used to determine LTCHs' LTCH PPS payments during the 2006 LTCH PPS rate year because these are the most recent available CCRs actually used to make LTCH PPS payments. The CCRs that we have previously used to estimate the fixed-loss amount, computed from cost report data in HCRIS and corresponding claims data in the MedPAR files, were not used by FIs to make LTCH payments. Data from the PSF have only recently become available for all LTCHs because the LTCH PPS has only been implemented for slightly over 2 years (that is, cost reporting periods beginning on or after October 1, 2002). Prior to the availability of PSF data, for purposes of determining the fixed-loss amount, CCRs were computed based on the best available data (that is, from cost report data in HCRIS and corresponding MedPAR claims data). However, because there is lag time in the submission of cost report data in HCRIS, CCRs may have been computed from cost reports that were several years old. In addition, often the applicable statewide average CCR was assigned to LTCHs when cost report and corresponding claims data to compute a CCR were unavailable. This proposed change in the source of obtaining CCRs for computing the fixed-loss amount results in more up-to-date and generally lower CCRs. This is the same data source used for obtaining CCRs under the IPPS for determining the IPPS fixed-loss amount annually (FY 2005 IPPS final rule, 69 FR 49276).

As stated above, in this proposed rule, we are only proposing to change the data source for obtaining the CCRs used in determining the fixed-loss amount and not our established methodology for determining the fixed-loss amount or our established rules for determining CCRs for LTCH PPS payment purposes. Accordingly, based on the data and policies described above, we are proposing a fixed-loss amount of $11,544 for the 2006 LTCH PPS rate year. Thus, we would pay an outlier

case 80 percent of the difference between the estimated cost of the case and the proposed outlier threshold (the sum of the adjusted proposed Federal LTCH payment for the LTC–DRG and the proposed fixed-loss amount of $11,544).

We note that the proposed fixed-loss amount of $11,544 for the 2006 LTCH PPS rate year is significantly lower than the current fixed-loss amount of $17,864 for the 2005 LTCH PPS rate year. This notable change in the proposed fixed-loss amount is primarily due to the proposed change in the source of LTCHs' CCRs used to estimate costs when estimating LTCH PPS payments (specifically, using CCRs from the PSF rather than computing them from HCRIS and corresponding MedPAR data). As described above, in the past we have used CCRs calculated using costs from the most recent available cost report data in HCRIS and corresponding charges from MedPAR claims data. As also noted above, often the statewide average CCR was assigned to LTCHs when data to compute a CCR was unavailable. However, for the 2006 LTCH PPS rate year, in determining the proposed fixed-loss amount, we are proposing to use CCRs from the PSF because, as we discussed above, we believe that these CCRs would more closely approximate the CCRs that will be used to make payments to LTCHs during the 2006 LTCH PPS rate and would result in a more accurate estimate of the cost of each case used in determining outlier payments.

As we noted above, CCRs from the PSF are based on more recent data and are generally lower than the CCRs computed from cost report data in HCRIS and corresponding claims data in the MedPAR files. Specifically, in comparing the best available data for 301 LTCHs, we found that almost 40 percent of LTCHs would experience a decrease in the CCR we used for computing the proposed fixed-loss amount. The decrease in the CCRs was in excess of 75 percent for some LTCHs in which the applicable statewide average CCR was assigned in determining the 2005 LTCH PPS rate year fixed-loss amount where data to compute a CCR was unavailable.

In determining estimated outlier payments (80 percent of costs beyond the fixed-loss amount), as discussed above, costs are estimated by multiplying the Medicare covered charges for the case by the LTCH's CCR. When relatively lower CCRs are used to estimate costs from charges, the resulting estimated cost of each case is lower, thereby reducing outlier payments since outlier payments are equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount). Lowering the fixed-loss amount results in more cases qualifying as outlier cases as well as increases the amount of the outlier payment for outlier cases because the maximum loss that a LTCH must incur before receiving an outlier payment (that is, the fixed-loss amount) would be smaller. Thus, in order to maintain that outlier payments would be equal to 8 percent of total LTCH PPS payments, the outlier fixed-loss should be lowered.

As stated above, we have established that under the LTCH PPS, outlier payments are estimated to be equal to 8 percent of total LTCH PPS payments. An analysis of recent LTCH PPS claims indicates that the 2004 and 2005 LTCH PPS rate year outlier fixed-loss amounts may have resulted in LTCH PPS outlier payments that fell below the estimated 8 percent. Specifically, based on claims discharged during the 2004 LTCH PPS rate year (July 1, 2003 through June 30, 2004), we estimate that outlier payments equal about 6 percent of total LTCH PPS payments.

As an alternative to lowering the fixed-loss amount, we examined adjusting the marginal cost factor (that is, the percentage that Medicare will pay of the estimated cost of a case that exceeds the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount for LTCH PPS outlier cases (§ 412.525(a)(3)), as a means of assuring that estimated outlier payments would be projected to equal 8 percent of total LTCH PPS payments. Under the LTCH PPS high-cost outlier policy at § 412.525(a)(3), the marginal cost factor is currently equal to 80 percent, as we established in the August 30, 2002 final rule (67 FR 56022–56026). As we discuss in that same final rule, a marginal cost factor equal to 80 percent means that we pay the LTCH for an outlier case, 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal rate for the LTC–DRG PPS payment and the fixed-loss amount).

As we discussed in the August 30, 2002 final rule (67 FR 56023), the marginal cost factor is designed to share the financial risk of treating extremely costly LTCH cases between LTCHs and the Medicare program by providing "a balance between the need to protect LTCHs financially, while encouraging them to treat expensive patients and maintain the incentives of a prospective payment system to improve the efficient delivery of care." Increasing the marginal cost factor from the established 80 percent, while maintaining the existing fixed-loss amount would increase total outlier payments because we would pay a larger percentage of the estimated costs that exceed the outlier threshold (the sum of the adjusted Federal rate for the LTC–DRG and the fixed-loss amount). For example, if we were to propose to increase the marginal cost factor to 90 percent without lowering the fixed-loss amount, we would pay outlier cases an additional 10 percent (90 percent minus 80 percent) of the estimated costs that exceed the outlier threshold (the sum of the adjusted Federal rate for the LTC–DRG and the fixed-loss amount).

While this alternative would also ensure that outlier payments are projected to equal 8 percent of total LTCH PPS payments, it would not maintain the incentive for LTCHs to treat expensive patients and improve the efficient delivery of care. It would significantly reduce the LTCHs' share of the financial risk in treating those costly patients. As we discussed in the August 30, 2002 final rule (67 FR 56023–56024), our analysis of payment to cost ratios for outlier cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than non-outlier cases, while simultaneously maintaining the integrity of the LTCH PPS.

Our proposal to lower the fixed-loss amount from the current fixed-loss amount of $17,864 to the proposed fixed-loss amount of $11,544 would reduce the amount of the loss that a LTCH must incur under the LTCH PPS for a case with unusually high costs before the LTCH will receive any additional Medicare payments. However, as we explain above, we believe the 80 percent marginal cost factor would continue to adequately maintain the LTCHs' share of the financial risk in treating those costly patients and ensure the efficient delivery of services. Under our proposed fixed-loss amount, LTCHs would still have to first lose $11,544 before receiving any additional payment for treating an unusually costly case. We believe the proposed fixed-loss amount of $11,544 in conjunction with the requirement that the LTCH is responsible for 20 percent of all estimated cost incurred beyond the outlier threshold (the sum of the adjusted Federal rate for the LTC–DRG PPS payment and the fixed-loss amount) would be significant enough to avoid the "incentive" to reach the outlier threshold in order to receive an

additional payment. Therefore, we believe the proposed fixed-loss amount of $11,544 would sufficiently identify unusually costly LTCH cases while maintaining the integrity of the LTCH PPS.

Accordingly, we are not proposing to adjust the marginal cost factor under the LTCH PPS high-cost outlier policy. Rather, as discussed in detail above, we believe that employing actual CCR data from the PSF for purposes of determining the proposed fixed-loss amount, which were actually used to make LTCH PPS payments, would result in a more accurate estimate of LTCH PPS outlier payments. Therefore, a decrease in the fixed-loss amount is appropriate and necessary to maintain that outlier payments would equal 8 percent of total LTCH PPS payments, as required under § 412.525(a).

d. *Reconciliation of Outlier Payments Upon Cost Report Settlement.* In the June 9, 2003 high-cost outlier final rule (68 FR 34508–34512), consistent with the change made for acute care hospitals under the IPPS at § 412.84(m), we established under § 412.525(a)(4)(ii), by cross-referencing § 412.84(m), that effective for LTCH PPS discharges occurring on or after August 8, 2003, reconciliation of outlier payments may be made upon cost report settlement to account for differences between the actual CCR and the estimated CCR ratio for the period during which the discharge occurs. As is the case with the changes made to the outlier policy for acute care hospitals under the IPPS, the instructions for implementing these regulations are discussed in further detail in Program Memorandum Transmittal A–03–058. In addition, in that same final rule (68 FR 34513), we established a similar change to the short-stay outlier policy at § 412.529(c)(5)(ii).

We also discussed in the June 9, 2003 IPPS high-cost outlier final rule (68 FR 34494–34515), consistent with the policy change for acute care hospitals under the IPPS at § 412.84(i)(2), that, for LTCH PPS discharges occurring on or after October 1, 2003, FIs will use either the most recent settled cost report or the most recent tentative settled cost report, whichever is from the later period, to determine a LTCH's CCR. In addition, in that same final rule, we established a similar change to the short-stay outlier policy at § 412.529(c)(5)(iii).

e. *Application of Outlier Policy to Short-Stay Outlier Cases.* As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56026), under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529 and discussed in section V.B.4. of this preamble) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for a short-stay outlier case in the 2006 LTCH PPS rate year, the high-cost outlier payment will be 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the proposed fixed-loss amount of $11,544 and the amount paid under the short-stay outlier policy).

4. Proposed Adjustments for Special Cases

a. *General.* As discussed in the August 30, 2002 LTCH PPS final rule (67 FR 55995), under section 123 of Pub. L. 106–113, the Secretary generally has broad authority in developing the PPS for LTCHs, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by maintaining an average inpatient length of stay of greater than 25 days. However, LTCHs may have cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC–DRG. As we explained in the August 30, 2002 LTCH PPS final rule (67 FR 55954), these cases would be paid inappropriately if the hospital were to receive the full LTC–DRG payment. Below we discuss the payment methodology for these special cases.

b. *Adjustment for Short-Stay Outlier Cases.* A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care or they may be discharged and not readmitted because they no longer require treatment. Furthermore, patients may expire early in their LTCH stay.

Generally, LTCHs are defined by statute as having an average inpatient length of stay of greater than 25 days. We believe that a payment adjustment for short-stay outlier cases results in more appropriate payments because these cases most likely would not receive a full course of treatment in this short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios simulated for LTCHs, for the cases described above, show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly "overpaid" for the resources they have actually expended.

Under § 412.529, in general, we adjust the per discharge payment to the least of 120 percent of the cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC–DRG payment, for all cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC–DRG.

As we noted in section V.C.3. of this preamble, in the June 9, 2003 high-cost outlier final rule (68 FR 34494–34515), we revised the methodology for determining CCRs for acute care hospitals under the IPPS because we became aware that payment vulnerabilities existed in the previous IPPS outlier policy. Consistent with the policy established for acute care hospitals under the IPPS at § 412.84(i) and (m) in the June 9, 2003 high-cost outlier final rule (68 FR 34515), and similar to the policy change described above for LTCH PPS high-cost outlier payments at § 412.525(a)(4)(ii), we established under § 412.529(c)(5)(ii) that for discharges on or after August 8, 2003, short-stay outlier payments are subject to the provisions in the regulations at § 412.84(i)(1), (i)(3) and (i)(4), and (m).

In addition, we also discussed in the June 9, 2003 high-cost outlier final rule (68 FR 34508–34513) that short-stay outlier payments are subject to the provisions in the regulations at § 412.84(i)(2) for discharges on or after October 1, 2003 in accordance with § 412.529(c)(5)(iii). In addition, in that same final rule, we established that the applicable statewide average CCR is applied when a LTCH's CCR exceeds the ceiling. Thus, the applicable statewide average CCR is no longer applied when a LTCH's CCR falls below the floor. Furthermore, we also established that any reconciliation of payments for short-stay outliers may be made upon cost report settlement to account for differences between the estimated CCR and the actual CCR for the period during which the discharge occurs. In the June 6, 2003 final rule (68 FR 34146–34148), for certain hospitals that qualify as LTCHs under section 1886(d)(1)(B)(iv)(II) of the Act ("subclause (II)" LTCHs) as added by section 4417(b) of Pub. L. 105–33, and implemented in § 412.23(e)(2)(ii), we

established a temporary adjustment to the short-stay outlier policy during the 5-year transition period. Under § 412.529(c)(4), effective for discharges from a "subclause (II)" LTCH occurring on or after July 1, 2003, the short-stay outlier percentage is 195 percent during the first year of the hospital's 5-year transition. For the second cost reporting period, the short-stay outlier percentage is 193 percent; for the third cost reporting period, the percentage is 165 percent; for the fourth cost reporting period, the percentage is 136 percent; and for the final cost reporting period of the 5-year transition (and future cost reporting periods), the short-stay outlier percentage is 120 percent, that is, the same as it is for all other LTCHs under the LTCH PPS.

As we discussed in the June 6, 2003 final rule (68 FR 34147), we established this formula with the expectation that an adjustment to short-stay outlier payments during the transition will result in reducing the difference between payments and costs for a "subclause (II)" LTCH for the period of July 1, 2003 through the end of the transition period, when the LTCH PPS will be fully phased-in.

As we stated in that same final rule, we also expect that during this 5-year period, "subclause (II)" LTCHs will make every attempt to adopt the type of efficiency enhancing policies that generally result from the implementation of prospective payment systems in other health care settings. We are not proposing any changes to the short-stay outlier policy in this proposed rule.

5. Hospital-within-Hospitals and Satellites of LTCHs Notification Requirements

In the August 30, 2002 LTCH PPS final rule, we established a notification requirement for LTCHS that were HwHs as defined in § 412.22(e) and satellites of LTCHs, defined at § 412.22(h)(5) and for LTCHs and satellites of LTCHs that were subject to onsite provider payment adjustment under § 412.532. At § 412.22(e)(3) and (h)(5) and § 412.532(i), respectively, we require LTCHs to notify their FIs and CMS of their co-located status within 60 days of the start of the hospital's first cost reporting period under the LTCH PPS. We also established an additional notification requirement at § 412.532(i), for LTCHs subject to the onsite provider payment adjustment at § 412.532, to notify their FIs and CMS within 60 days of a change in co-located status. We intended that these regulations also require the LTCHs to identify the Medicare providers, that is, acute care hospitals, as well as other excluded hospitals and units (IRFs and IPFs), and SNFs with which they were co-located.

It appears, however, that this expectation is unclear in our present regulations because we have been informed by our Regional offices and FIs that LTCHs, for which they are responsible, have in many cases neglected to specify the names, addresses, and provider identification numbers of their co-located providers. We are proposing to clarify our policy that when a LTCH informs its fiscal intermediary of its co-located status, it also would be required to include the name, address, and the provider numbers of the other co-located providers (that is, acute care hospitals, as well as other excluded hospitals and units (IRFs and IPFs) and SNFs) with which they were co-located. Furthermore, since the existing regulation text at § 412.22(e)(3) and (h)(5) required that the notification take place within 60 days of the LTCH's first cost reporting period beginning on or after October 1, 2002 and § 412.532(i) required that the notification occur within 60 days of the effective date of the original regulation (October 1, 2002), and this timeframe for many providers has long since passed, we are proposing to eliminate that specific timing requirement in favor of the on-going, prospective notification requirement described above, which is also clearer and more comprehensive. We are also proposing to delete the phrase "and within 60 days of a change in co-located status" from § 412.532(i) because we believe that this proposed continuing notification requirement in the proposed revised regulation text at § 412.22(e)(3) and (h)(5), as well as at § 412.532(i) would include the obligation to notify CMS and the fiscal intermediary in writing of any changes in co-located status and the obligation to provide the requisite information detailed above. We are proposing revisions to each of the three notification provisions, therefore, to establish consistency and to clearly state the on-going requirement that LTCH HwHs and satellites of LTCHs inform their fiscal intermediary and CMS in writing of the names, addresses, and provider numbers of other applicable co-located Medicare providers.

6. Other Payment Adjustments

As indicated earlier, we have broad authority under section 123 of Pub. L. 106–113, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs. Thus, in the August 30, 2002 LTCH PPS final rule (67 FR 56014–56027), we discussed our extensive data analysis and rationale for not implementing an adjustment for geographic reclassification, rural location, treating a disproportionate share of low-income patients (DSH), or indirect medical education (IME) costs. In that same final rule, we stated that we would collect data and reevaluate the appropriateness of these adjustments in the future once more LTCH data become available after the LTCH PPS is implemented.

Because the LTCH PPS has only been implemented for a few years and there is a lag-time in data availability, sufficient new data have still not yet been generated that would enable us to conduct a comprehensive reevaluation of these payment adjustments. Nonetheless, we have reviewed the limited data that are available and have found no evidence to support additional proposed policy changes. Therefore, in this proposed rule, we are not proposing to make any adjustments for geographic reclassification, rural location, DSH, or IME. However, we will continue to collect and interpret new data as they become available in the future to determine if these data support proposing any additional payment adjustments.

7. Proposed Budget Neutrality Offset to Account for the Transition Methodology

Under § 412.533, we implemented a 5-year transition period from reasonable cost-based payment to prospective payment, during which a LTCH is paid an increasing percentage of the LTCH PPS rate and a decreasing percentage of its payments under the reasonable cost-based payment methodology for each discharge. Furthermore, we allow a LTCH to elect to be paid based on 100 percent of the standard Federal rate in lieu of the blended methodology.

The standard Federal rate was determined as if all LTCHs will be paid based on 100 percent of the standard Federal rate. As stated earlier, we provide for a 5-year transition period that allows LTCHs to receive payments based partially on the reasonable cost-based methodology. Section 123(a)(1) of the Pub. L. 106–113 requires that the Secretary shall develop a per discharge prospective payment system for LTCHs and such system shall "maintain budget neutrality." Accordingly, as we established in the August 30, 2002 final rule (67 FR 56033–56036), during the 5-year transition period, we reduce all LTCH Medicare payments (whether a LTCH elects payment based on 100 percent of the Federal rate or whether a LTCH is being paid under the transition blend methodology).

Specifically, we reduce all LTCH Medicare payments during the 5-year transition by a factor that is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH PPS had not been implemented, to the projected total Medicare program PPS payments (that is, payments made under the transition methodology and the option to elect payment based on 100 percent of the Federal rate).

In the May 7, 2004 final rule (69 FR 25702), based on the best available data at that time, we projected that approximately 93 percent of LTCHs will be paid based on 100 percent of the standard Federal rate rather than receive payment under the transition blend methodology for the 2005 LTCH PPS rate year. Using the same methodology described in the August 30, 2002 LTCH PPS final rule (67 FR 56034), this projection, which used updated data and inflation factors, was based on our estimate that either: (1) A LTCH has already elected payment based on 100 percent of the Federal rate prior to the start of the 2005 LTCH PPS rate year (July 1, 2004); or (2) a LTCH would receive higher payments based on 100 percent of the 2005 LTCH PPS rate year standard Federal rate compared to the payments it would receive under the transition blend methodology. Similarly, we projected that the remaining 7 percent of LTCHs will choose to be paid based on the applicable transition blend methodology (as set forth under § 412.533(a)) because they would receive higher payments than if they were paid based on 100 percent of the 2005 LTCH PPS rate year standard Federal rate.

In that same final rule, based on the best available data at that time and policy revisions described in that same rule, we projected that the full effect of the remaining 4 years of the transition period (including the election option) would result in a cost to the Medicare program of $29 million. Specifically, for the 2005 LTCH PPS rate year, we estimated that the cost of the transition would be $15 million. In order to maintain budget neutrality, using the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56034) based on updated data and the policies and rates discussed in the May 7, 2004 LTCH PPS final rule, we established a 0.5 percent reduction (0.995) to all LTCH payments in the 2005 LTCH PPS rate year to account for the $15 million estimate cost of the transition period methodology (including the option to elect payment based on 100 percent of the Federal rate) for the 2005 LTCH PPS rate year. Furthermore, we indicated that we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated costs for the respective LTCH PPS rate years

In this proposed rule, based on the most recent available data, using the same methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56034), we are projecting that approximately 94 percent of LTCHs would be paid based on 100 percent of the proposed standard Federal rate rather than receive payment under the transition blend methodology during the 2006 LTCH PPS rate year. This projection, which used updated data is based on our estimate that either: (1) A LTCH has already elected payment based on 100 percent of the Federal rate prior to the beginning of the 2006 LTCH PPS rate year (July 1, 2005); or (2) a LTCH would receive higher payments based on 100 percent of the proposed standard Federal rate compared to the payments they would receive under the transition blend methodology. Similarly, we project that the remaining 6 percent of LTCHs would choose to be paid based on the transition blend methodology at § 412.533 because those payments are estimated to be higher than if they were paid based on 100 percent of the proposed standard Federal rate. The applicable transition blend percentage is applicable for a LTCH's entire cost reporting period beginning on or after October 1 (unless the LTCH elects payment based on 100 percent of the Federal rate).

Based on the best available data and the proposed policies described in this proposed rule, we are projecting that in the absence of a transition period budget neutrality offset, the full effect of the remaining 3 years of the transition period (including the election option) as compared to payments as if all LTCHs would be paid based on 100 percent of the Federal rate would result in a cost to the Medicare program of $10 million as follows:

LTCH PPS rate year	Estimated cost (in millions)
2006	7
2007	3
2008	0

We are no longer projecting a small cost for the 2008 LTCH PPS rate year (July 1, 2007 through June 30, 2008) even though some LTCH's will have a cost reporting period for the 5th year of the transition period which will be concluding in the first 3 months of the 2008 LTCH PPS rate year because as we discussed above, based on the most recent available data, we are projecting that the vast majority of LTCHs will have made the election to be paid based on 100 percent of the Federal rate rather than the transition blend.

Accordingly, using the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56034) based on updated data and the policies and rates discussed in this proposed rule, we are proposing to implement a 0.2 percent reduction (0.998) to all LTCHs' payments for discharges occurring on or after July 1, 2005 and through June 30, 2006, to account for the estimated cost of the transition period methodology (including the option to elect payment based on 100 percent of the Federal rate) of the $7 million for the 2006 LTCH PPS rate year.

As noted above, in order to maintain budget neutrality, we indicated that we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated costs for the respective LTCH PPS rate years. In this proposed rule, based on the best available data, we estimate the following proposed budget neutrality offsets to LTCH PPS payments during the remaining years of the transition period: 0.1 percent (0.999) for the 2007 LTCH PPS rate year, and 0 percent (no adjustment) for the 2008 LTCH PPS rate year. As noted above, we believe there is no longer a need for a small offset in the 2008 LTCH PPS rate year because we project that the vast majority of those LTCHs whose 5th year of the transition period will be concluding in the first 3 months of the 2008 LTCH PPS rate year will be paid based on 100 percent of the Federal rate rather than the transition blend.

As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56036), consistent with the statutory requirement for budget neutrality in section 123(a)(1) of Public Law 106–113, we intended that estimated aggregate payments under the LTCH PPS for FY 2003 equal the estimated aggregate payments that would be made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data at the time and necessarily reflect assumptions. As the LTCH PPS progresses, we are monitoring payment data and will evaluate the ultimate accuracy of the assumptions used in the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS) described in the August 30,

2002 LTCH PPS final rule (67 FR 56027–56037). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations were based.

Section 123 of Pub. L. 106–113 and section 307 of Pub. L. 106–554 provide broad authority to the Secretary in developing the LTCH PPS, including the authority for appropriate adjustments. Under this broad authority, as implemented in the regulations at § 412.523(d)(3), we have provided for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years.

In the May 7, 2004 LTCH PPS final (69 FR 25703–25704), based on the best available data at that time, we estimated that total Medicare program payments for LTCH services over the next 5 LTCH PPS rate years would be $2.96 billion for the 2005 LTCH PPS rate year; $2.98 billion for the 2006 LTCH PPS rate year; $2.95 billion for the 2007 LTCH PPS rate year; $3.01 billion for the 2008 LTCH PPS rate year; and $3.12 billion for the 2009 LTCH PPS rate year.

In this proposed rule, consistent with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56036), based on the most recent available data, we estimate that total Medicare program payments for LTCH services for the next 5 LTCH PPS rate years would be as follows:

LTCH PPS rate year	Estimated payments ($ in billions)
2006	2.94
2007	2.90
2008	2.96
2009	3.08
2010	3.24

In accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56037), these estimates are based on the projection that 94 percent of LTCHs would elect to be paid based on 100 percent of the 2006 LTCH PPS rate year proposed standard Federal rate rather than the applicable transition blend, and our estimate of 2006 LTCH PPS rate year payments to LTCHs using our Office of the Actuary's most recent estimate of the excluded hospital with capital market basket of 3.1 percent for the 2006 LTCH PPS rate year, 2.9 percent for the 2007 LTCH PPS rate year, 2.7 for the 2008 LTCH PPS rate year, and 2.9 percent for the 2009 and 2010 LTCH PPS rate years. We also took into account our Office of the Actuary's projection that there would be a change in Medicare beneficiary enrollment of −4.9 percent in the 2006 LTCH PPS rate year, −6.5 percent in the 2007 LTCH PPS rate year, −1.1 percent in the 2008 LTCH PPS rate year, 0.2 percent in the 2009 LTCH PPS rate year, and 0.8 percent in the 2010 LTCH PPS rate year. (We note that, based on the most recent available data, our Office of the Actuary is projecting a decrease in Medicare fee-for-service Part A enrollment, in part, because they are projecting an increase in Medicare managed care enrollment as a result of the implementation of several provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.)

As we discussed in the May 7, 2004 LTCH PPS final rule (69 FR 25704), because the LTCH PPS has only been recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Accordingly, we did not make a one-time adjustment under § 412.523(d)(3). At this time, we still do not have sufficient new data to enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Therefore, in this proposed rule, we are not proposing to make a one-time adjustment under § 412.523(d)(3) so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS is not perpetuated in the PPS rates for future years. However, we will continue to collect and interpret new data as the data become available in the future to determine if such an adjustment should be proposed.

8. Extension of the Interrupted Stay Policy

In the May 7, 2004 LTCH PPS final rule, we revised the definition of an "interruption of a stay" at § 412.531 by establishing two distinct categories, "[a] 3-day or less interruption of stay" at (a)(1) and "[a] greater than 3-day interruption of stay" at (a)(2). The "greater than 3-day interruption of stay" which was directly based on the original "interruption of stay" policy that had been implemented at the start of the LTCH prospective payment system (August 30, 2002 LTCH PPS final rule, 67 FR 56002) is defined as a stay at a LTCH during which a Medicare inpatient is discharged from the LTCH to an acute care hospital, an IRF, or a SNF (or swing bed) for a period of greater than 3 days, but is readmitted to the LTCH within the applicable fixed day period, that is, between 4 and 9 consecutive days for an acute care hospital, between 4 and 27 consecutive days for an IRF, and between 4 and 45 consecutive days for a SNF. In each of these cases, the day count begins on the day of discharge from the LTCH, (which is also the day of admission to the other site of care), even though the payment features of the greater than 3-day policy itself govern the stay only after day 4 once the 3-day policy, described below, no longer applies.

As defined in the previous paragraph, for purposes of Medicare payment to the LTCH, a greater than 3-day interruption of stay is treated as only one discharge from the LTCH and generates only one LTC–DRG payment. However, under this policy, Medicare makes a separate payment to the intervening provider (that is, acute care hospital, IRF, or SNF) for the treatment or care given to the beneficiary during the interruption.

In implementing this policy, we provided that, in the event a Medicare inpatient is discharged from a LTCH and is readmitted and the stay qualifies as an interrupted stay, the provider must cancel the claim generated by the original stay in the LTCH and submit one claim for the entire stay. (For further details, see Medicare Program Memorandum Transmittal A–02–093, September 2002.)

On the other hand, if the patient stay exceeds the total fixed-day threshold outside of the LTCH at the other facility before being readmitted, two separate LTCH PPS payments would be made. One would be based on the principal diagnosis and length of stay for the first discharge from the LTCH and the other based on the principal diagnosis and length of stay for the second discharge from the LTCH. Depending upon their lengths of stay, both stays could result in payments as a short-stay outlier (§ 412.529), a full LTC–DRG, or even a high-cost outlier. Further, if the principal diagnosis is the same for both admissions, the hospital could receive two similar payments. It is also important to note that under the existing greater than 3-day interrupted stay policy, a separate Medicare payment is made to the intervening provider under that provider's payment system.

The 3-day or less interruption of stay policy is defined at § 412.531(a)(1) as "a stay at a long-term care hospital during which a Medicare inpatient is discharged from the long-term care hospital to an acute care hospital, IRF, SNF, or the patient's home and readmitted to the same long-term care hospital within 3-days of the discharge

from the long-term care hospital. The 3-day or less period begins with the date of discharge from the long-term care hospital and ends not later than midnight of the third day." As discussed in detail in the May 7, 2004 LTCH PPS final rule (69 FR 25691–25700), there are several components to this policy. First, only one LTC–DRG payment will be made to the LTCH for the patient who is discharged from the LTCH to an acute care hospital, IRF, SNF, or patient's home and readmitted to the same LTCH within 3 days. Secondly, any off-site tests or medical treatment, either inpatient or outpatient, delivered at an acute care hospital or an IRF, or care at a SNF, will be covered by the LTCH "under arrangements" if the patient is readmitted to the LTCH within 3 days. (We established a specific exception to the "under arrangements" requirement during the 2005 LTCH PPS rate year, which we will review below, at § 412.531(b)(1)(ii)(A)(1), in the event that the treatment was grouped to a surgical DRG under the IPPS at an acute care hospital.)

Existing regulations at § 412.509(c) require a LTCH to furnish all necessary covered services for a Medicare beneficiary who is an inpatient of the hospital either directly or "under arrangements" (as defined in § 409.3). The "under arrangements" policy set forth in § 412.509 derives from the regulations at § 411.15(m), which implement section 1862(a)(14) of the Act. Section 1862(a) of the Act specifies the services for which no payment may be made under Medicare Part A and Part B and also specifies the exception for certain services to be furnished "under arrangements" by providers. Under section 1862(a)(14) of the Act, notwithstanding any other provision of this title, "no payment may be made under part A or part B for any expenses incurred for items or services which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph), services described by section 1861(s)(2)(K) of the Act (certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist, and which are furnished to an individual who is a patient of a hospital or critical access hospital by an entity other than the hospital or critical access hospital, unless the services are furnished under arrangements (as defined in section 1861(w)(1) of the Act)) with the entity made by the hospital or critical access hospital." Section 1861(w)(1) of the Act states that "[t]he term 'arrangements' is limited to arrangements under which receipt of payment by the hospital, critical access hospital, skilled nursing facility, home health agency, or hospice program (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this title, discharges the liability of such individual or any other person to pay for the services." We believed the objective of these statutory provisions, which were implemented for inpatient acute care hospitals in regulations at § 411.15(m) and subsequently at § 412.509 for LTCHs, was to discharge financial liability for inpatients who may have received additional care off-premises and to assign payment responsibility for the care to the hospital that is being paid for that beneficiary's total care for that spell of illness.

Over the years, we have often referred to this as the "prohibition against unbundling" for purposes of emphasizing that if a Medicare provider "unbundles" specific components of a beneficiary's total inpatient care (provided either "directly" or "under arrangements") and sends separate claims to Medicare for those tests or treatments, the provider would be acting in violation of the statute and applicable regulations. Since LTCHs treat patients with multicomorbidities who are often in need of a wide range of diagnostic and treatment modalities and lengthy hospitalizations, we believe that in this particular setting, this statutory requirement was particularly vulnerable to gaming. For that reason, in formulating the "3-days or less interruption of stay policy" at § 412.531(a), we clarified the existing general unbundling prohibition and the unbundling prohibition as it applied to the interrupted stay policy under the LTCH PPS.

As noted above, we were concerned that LTCH patients, under active treatment, were being inappropriately discharged to other treatment sites, receiving tests or procedures related to one of the diagnoses for which the patient was being hospitalized and which otherwise should have been provided at the LTCH either directly or "under arrangements" (§ 412.509) prior to being readmitted to the LTCH. Such behavior resulted in another claim being submitted to Medicare by the other treatment site for those tests or procedures. Since it is a fundamental principle of all prospective payment systems that payments associated with specific diagnostic group include all costs associated with rendering care to the type of patients treated, the behavior described above on the part of the LTCH, would result in an additional and inappropriate Medicare payments for services delivered by an intervening provider.

If a LTCH obtains, from another facility "under arrangements," a specific test or procedure that is not available on the LTCH's premises for one of its inpatients, as contemplated by § 412.509, a discharge and a subsequent readmission would therefore be unnecessary and inappropriate. This is true even if it is necessary to transport the patient to another facility to receive the arranged-for service. In this situation, generally, the LTCH would include the medically necessary test or procedure on its patient claim to Medicare which could have an effect on the assignment of the LTC–DRG and, thus, the Medicare payment to the LTCH, and the LTCH would be responsible for paying the provider directly for the test or procedure. Under the 3-day or less interruption of stay policy, if a LTCH patient is discharged to an acute care hospital, IRF, SNF, or patient's home and returns to the LTCH for further hospital-level care within 3 days, any Medicare-covered services delivered during that interruption will be deemed to have been delivered "under arrangements and included in the one episode of care for which Medicare will pay the LTCH. Furthermore, under § 409.3, when services are furnished "under arrangements," Medicare payments made to the provider that arranged for the services discharges the liability of the beneficiary or any other person to pay for those services. Our policy was premised on the belief that 3 days, in most instances, represented an appropriate interval for establishing whether or not the reason for the patient's readmission was directly connected to the original episode of care at the LTCH. Therefore, no additional claim can be submitted to Medicare by the other provider that actually furnished the test or procedure if the patient is readmitted to the LTCH within 3 days since the initial LTCH admission triggered a Medicare payment under the LTCH prospective payment system that has been calibrated to cover payment for all necessary Medicare covered services delivered to a beneficiary during that episode of care.

Moreover, under this finalized policy, where the LTCH is required to pay for outpatient or inpatient medical treatment or care provided at an acute care hospital, an IRF or SNF during any days of the 3-day or less interruption, all days of the 3-day or less interruption that the patient is away from the LTCH

will be included in that patient's day count at the LTCH. If the LTCH patient goes home during the interruption and receives no additional medical care prior to being readmitted to the LTCH, the intervening days will not be included in the day count because the LTCH did not deliver any services to the patient during those days either directly or "under arrangement".

In the final policy, as established in the May 7, 2004 LTCH PPS final rule, for LTCH rate year 2005, we did provide a limited exception to the prohibition against additional Medicare payments to an intervening provider under the less than 3-day interruption of stay policy at § 412.531(b)(1)(ii)(A)(1). Under this exception, if a patient was discharged from a LTCH, admitted as an inpatient to an acute care hospital and readmitted to the same LTCH within 3 days, and if the treatment that was delivered at the acute care hospital was grouped to a surgical DRG Medicare will pay the acute care hospital separately for that surgical treatment. We established this exception in response to comments on the original policy that we proposed in the January 30, 2004 proposed rule (69 FR 4768–4772) requesting that we take into consideration the following scenario: The occurrence of an emergency "totally unrelated" to a LTCH patient's admitting diagnoses that occurred and requiring surgery at an acute inpatient hospital, followed by the readmission of the patient within 3 days to the LTCH for a continuation of treatment of the patient's initial medical problems.

In our response to these concerns, we noted that the 3-day or less interruption of stay policy at 412.531 resulted from our concern that if a LTCH patient was discharged to an acute care hospital for only 1, 2, or 3 days, followed by a readmission to the LTCH, there could be reason to believe that the treatment delivered, even if it was grouped to a surgical DRG, was not a major procedure because of the relatively short length of stay, and, therefore, should have been provided "under arrangements."

In the May 7, 2004 LTCH PPS final rule, we stated that over the course of the first year of implementation of the revised 3-day or less interrupted stay policy, we would study relevant claims data in order to evaluate whether further proposed refinements to this policy would be warranted in this year's rule. Specifically, we stated that we would analyze new data to determine whether problems associated with LTCH interrupted stays equally affected all settings to which LTCH patients may have been discharged and subsequently readmitted; and we would closely monitor patterns of discharges and readmissions under the first year of this policy. In order to pursue these analyses, we stated that we would be using relevant claims data as soon as they were available to determine whether our policy was producing its desired effect of reducing unnecessary and inappropriate Medicare payments while not compromising beneficiary access to medically necessary services. The 3-day interruption of stay policy was first implemented on July 1, 2004, and, therefore, we do not yet have sufficient data to accomplish the above evaluations. Therefore, we are proposing to extend the surgical DRG exception through the 2006 LTCH rate year, from July 1, 2005 through June 30, 2006. At that point, the policy will have been in effect for 12 months and we believe that we will be able to better evaluate whether this exception should be extended further as well as whether the overall policy requires modification in order to serve the overall goals of the Medicare program.

9. Onsite Discharges and Readmittances

Under § 412.532, generally, if more than 5 percent of all Medicare discharges during a cost reporting period are patients who are discharged to an onsite SNF, IRF, or psychiatric facility, or to an onsite acute care hospital and who are then directly readmitted to the LTCH (including a satellite facility), only one LTC–DRG payment will be made to the LTCH for these type of discharges and readmittances during the LTCH's cost reporting period. Therefore, payment for the entire stay will be paid either as one full LTC–DRG payment or a short-stay outlier, depending on the duration of the entire LTCH stay.

In applying the 5-percent threshold, we apply one threshold for discharges and readmittances with the co-located acute care hospital. There is also a separate 5-percent threshold for the aggregate of all discharges and readmittances to the LTCH from its co-located SNFs, IRFs, and psychiatric facilities. In the case of a LTCH that is co-located with an acute care hospital, an IRF, or a SNF, the interrupted stay policy at § 412.531 applies until the 5-percent threshold is reached. Once the applicable 5-percent threshold is reached, all LTCH discharges and readmittances from the co-located acute care hospital for that cost reporting period are paid as one discharge pursuant to § 412.532. This means that once the 5-percent threshold has been reached, even if a discharged LTCH Medicare patient was readmitted to the LTCH following a stay in an acute care hospital of greater than 9 days, if the facilities share a common location, the subsequent discharge from the LTCH will not represent a separate hospitalization for payment purposes. Under this policy, the total stay for a patient will include LTCH days prior to the interruption and, also, the days after the readmission to the LTCH that followed the interruption and Medicare will make one LTC–DRG payment when the patient is discharged during a cost reporting period. One LTC–DRG will be assigned based upon all patient diagnoses and care delivered to the patient during the entire LTCH stay and included on the discharge claim regardless of the length of stay at the acute care hospital during the interruption.

Similarly, if the LTCH has exceeded its 5-percent threshold for all discharges to an onsite IRF, SNF, or psychiatric hospital or unit, which were readmitted to the LTCH from those providers, the subsequent LTCH discharge for those patients will not be treated as a separate discharge for Medicare payment purposes. (Unless the up to 3-day interrupted stay policy is applicable, payment to an acute care hospital under the IPPS, to the IRF under the IRF PPS, or to a SNF under the SNF PPS, will not be affected. Payments to the psychiatric facility also will not be affected.)

In the August 30, 2002 LTCH PPS final rule, we established a notification requirement for LTCHs that were HwHs as defined in § 412.22(e) and satellites of LTCHs, defined at § 412.22(h)(5) and for LTCHs and for satellites of LTCHs that were subject to the onsite provider payment adjustment under § 412.532(i) because they were co-located with other Medicare providers, as specified in § 412.532(a). At § 412.22(e)(3) and (h)(5), as well as at § 412.532(i), respectively, we require LTCHs to notify us and their FIs of their co-located status within 60 days of the start of the hospital's first cost reporting period under the LTCH PPS. At § 412.532(i), we also established an additional notification requirement for LTCHs subject to the onsite provider payment adjustment at § 412.532, to notify their FIs and CMS within 60 days of a change in co-located status. We intended that these regulations also require the LTCHs to identify the Medicare providers, that is, acute care hospitals, as well as other excluded hospitals and units (IRFs and IPFs), and SNFs with which they were co-located and their addresses and Medicare provider numbers for purposes of implementing the payment adjustment for co-located providers described above.

It appears, however, that this expectation is unclear in our existing regulations because we have been informed by our Regional offices and FIs that LTCHs, for which they are responsible, have in many cases neglected to specify the names, addresses, and provider identification numbers of their co-located providers. We are proposing to clarify our policy that when a LTCH informs its fiscal intermediary of its co-located status, it also would be required to include the name, address, and the provider numbers of the other co-located providers (that is, acute care hospitals, as well as other excluded hospitals and units (IRFs and IPFs) and SNFs) with which they were co-located. Furthermore, since the existing regulation text at § 412.22(e)(3) and (h)(5) required that the notification take place within 60 days of the LTCH's first cost reporting period beginning on or after October 1, 2002 and § 412.532(i) required that the notification occur within 60 days of the effective date of the original regulation (October 1, 2002), and this timeframe for many LTCHs has long since passed, we are eliminating that specific timing requirement in favor of the on-going prospective notification requirement described above, which is also clearer and more comprehensive. We are proposing to delete the phrase "and within 60 days of a change in co-located status" from § 412.532(i) because we believe that this continuing notification requirement in the proposed revised regulation text at § 412.532(i) as well as at § 412.22(e)(3) and (h)(5) would include the obligation to notify CMS and the fiscal intermediary in writing of any change in co-located status and the obligation to provide the requisite information detailed above. We are proposing revisions to each of the notification provisions at § 412.531(i), and at § 412.22(e)(3) and (h)(5) to establish consistency and to clearly state the on-going requirement that LTCH HwHs and satellites of LTCHs inform their fiscal intermediaries and CMS of the names, addresses, and provider numbers of other co-located Medicare providers. Although § 412.532(i) previously mentioned LTCHs and satellites of LTCHs that occupy space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital and that meet the criteria of § 412.22(h)(1) through (h)(4), the scope of § 412.532 is clearly broader than this. Specifically, § 412.532(a) also includes SNFs among the providers subject to this policy. We are, therefore, proposing to revise the regulation text at § 412.532(i) to include all providers at § 412.532(a).

V. Computing the Proposed Adjusted Federal Prospective Payments for the 2006 LTCH PPS Rate Year

[If you choose to comment on issues in this section, please include the caption "PROPOSED ADJUSTED FEDERAL PROSPECTIVE PAYMENTS" at the beginning of your comments.]

In accordance with § 412.525 and as discussed in section IV.C. of this proposed rule, the standard Federal rate is adjusted to account for differences in area wages by multiplying the labor-related share of the standard Federal rate by the appropriate LTCH PPS wage index (as shown in Tables 1 and 2 of the Addendum to this proposed rule). The standard Federal rate is also adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the nonlabor-related share of the standard Federal rate by the appropriate cost-of-living factor (shown in Table I in section IV.C.2. of this preamble). In the May 7, 2004 final rule (69 FR 25674), we established a standard Federal rate of $36,833.69 for the 2005 LTCH PPS rate year. In this proposed rule, based on the best available data, previously established policies, and the proposed policies described in this rule, we are proposing to establish a standard Federal rate of $37,975.53 for the 2006 LTCH PPS rate year as discussed in section IV.B. of this preamble. We illustrate the methodology used to adjust the proposed Federal prospective payments for the 2006 LTCH PPS rate year in the following example: During the 2006 LTCH PPS rate year, a Medicare patient is in a LTCH located in Chicago-Naperville-Joliet, Illinois (CBSA 16974). This LTCH is in the third year of the wage index phase-in, thus, the proposed three-fifths wage index values are applicable. The proposed three-fifths wage index value for CBSA 16974 is 1.0521 (see Table 1 in the Addendum to this proposed rule). The Medicare patient is classified into LTC–DRG 9 (Spinal Disorders and Injuries), which has a relative weight of 1.0950 (see Table 3 of the Addendum to this proposed rule). To calculate the LTCH's total proposed adjusted Federal prospective payment for this Medicare patient, we compute the proposed wage-adjusted Federal prospective payment amount by multiplying the proposed unadjusted standard Federal rate ($37,975.53) by the proposed labor-related share (72.885 percent) and the proposed wage index value (1.0521). This proposed wage-adjusted amount is then added to the nonlabor-related portion of the proposed unadjusted standard Federal rate (27.115 percent; adjusted for cost of living, if applicable) to determine the adjusted Federal rate, which is then multiplied by the LTC–DRG relative weight (1.0950) to calculate the total proposed adjusted Federal prospective payment for the 2006 LTCH PPS rate year ($43,162.25). Finally, as discussed in section IV.C.6. of this preamble, for the 2006 LTCH PPS rate year, the total proposed adjusted Federal prospective payment is reduced by the proposed 0.2 percent budget neutrality offset to account for the costs of the transition methodology.

The following illustrates the components of the calculations in this example:

Unadjusted Standard Federal Prospective Payment Rate:	$37,975.53
Labor-Related Share	0.72885
Labor-Related Portion of the Federal Rate	= $27,678.47
3/5ths Wage Index (CBSA 16974)	1.0521
Wage-Adjusted Labor Share of Federal Rate	= $29,120.52
Nonlabor-Related Portion of the Federal Rate ($37,975.53 × 0.27115)	+ $ 10,297.06
Adjusted Federal Rate Amount	= $39,417.58
LTC–DRG 9 Relative Weight	× 1.0950
Total Adjusted Federal Prospective Payment (Before the Budget Neutrality Offset)	= $43,162.25
Budget Neutrality Offset	× 0.998
Total Federal Prospective Payment (Including the Budget Neutrality Offset)	= $42,816.95

VI. Transition Period

To provide a stable fiscal base for LTCHs, under § 412.533, we implemented a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based on industry-wide average operating and capital-related costs. Under the average pricing system, payment is not based on the experience of an individual hospital. As discussed in the August 30, 2002 final rule (67 FR 56038), we believe that a 5-year phase-in provides LTCHs time to adjust their operations and capital financing to the LTCH PPS, which is based on prospectively determined Federal payment rates. Furthermore, we believe that the 5-year phase-in of the LTCH PPS also allows LTCH personnel to develop proficiency with the LTC–DRG coding system, which will result in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates.

In accordance with § 412.533, the transition period for all hospitals subject to the LTCH PPS begins with the hospital's first cost reporting period beginning on or after October 1, 2002 and extends through the hospital's last cost reporting period beginning before October 1, 2006. During the 5-year transition period, a LTCH's total payment under the LTCH PPS is based on two payment percentages—one based on reasonable cost-based (TEFRA) payments and the other based on the standard Federal prospective payment rate. The percentage of payment based on the LTCH PPS Federal rate increases by 20 percentage points each year, while the reasonable cost-based payment rate percentage decreases by 20 percentage points each year, for the next 2 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs will be determined entirely under the Federal rate. The blend percentages as set forth in § 412.533(a) are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	Reasonable cost principles
		Rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

For cost reporting periods that begin on or after October 1, 2004, and before October 1, 2005 (FY 2005), the total payment for a LTCH is 40 percent of the amount calculated under reasonable cost principles for that specific LTCH and 60 percent of the Federal prospective payment amount. For cost reporting periods that begin on or after October 1, 2005 and before October 1, 2006 (FY 2006), the total payment for a LTCH will be 20 percent of the amount calculated under reasonable cost principles for that specific LTCH and 80 percent of the Federal prospective payment amount. As we noted in the May 7, 2004 final rule (69 FR 25674), the change in the effective date of the annual LTCH PPS rate update from October 1 to July 1 has no effect on the LTCH PPS transition period as set forth in § 412.533(a). That is, LTCHs paid under the transition blend under § 412.533(a) will receive those blend percentages for the entire 5-year transition period (unless they elect payments based on 100 percent of the Federal rate). Furthermore, LTCHs paid under the transition blend will receive the appropriate blend percentages of the Federal and reasonable cost-based rate for their entire cost reporting period as prescribed in § 412.533(a)(1) through (a)(5).

The reasonable cost-based rate percentage is a LTCH specific amount that is based on the amount that the LTCH would have been paid (under TEFRA) if the PPS were not implemented. Medicare fiscal intermediaries will continue to compute the LTCH reasonable cost-based payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act.

In implementing the PPS for LTCHs, one of our goals is to transition hospitals to full prospective payments as soon as appropriate. Therefore, under § 412.533(c), we allow a LTCH, which is subject to a blended rate, to elect payment based on 100 percent of the Federal rate at the start of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from reasonable cost-based payments to prospective payments. Once a LTCH elects to be paid based on 100 percent of the Federal rate, it will not be able to revert to the transition blend. For cost reporting periods that began on or after December 1, 2002, and for the remainder of the 5-year transition period, a LTCH must notify its fiscal intermediary in writing of its election on or before the 30th day prior to the start of the LTCH's next cost reporting period. For example, a LTCH with a cost reporting period that begins on May 1, 2005, must notify its fiscal intermediary in writing of an election before April 1, 2005.

Under § 412.533(c)(2)(i), the notification by the LTCH to make the election must be made in writing to the Medicare fiscal intermediary. Under §§ 412.533(c)(2)(ii) and (c)(2)(iii), the intermediary must receive the request on or before the specified date (that is, on or before the 30th day before the applicable cost reporting period begins for cost reporting periods beginning on or after December 1, 2002 through September 30, 2006), regardless of any postmarks or anticipated delivery dates.

Notifications received, postmarked, or delivered by other means after the specified date will not be accepted. If the specified date falls on a day that the postal service or other delivery sources are not open for business, the LTCH will be responsible for allowing sufficient time for the delivery of the request before the deadline. If a LTCH's notification is not received timely, payment will be based on the transition period blend percentages.

VII. Payments to New LTCHs

Under § 412.23(e)(4), for purposes of Medicare payment under the LTCH PPS, we define a new LTCH as a provider of inpatient hospital services that otherwise meets the qualifying criteria for LTCHs, set forth in § 412.23(e)(1) and (e)(2), under present or previous ownership (or both), and its first cost reporting period as a LTCH begins on or after October 1, 2002. We also specify in § 412.500 that the LTCH PPS is applicable to hospitals with a cost

reporting period that began on or after October 1, 2002.

As we discussed in the August 30, 2002 final rule (67 FR 56040), this definition of new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, as added by section 4416 of Public Law 105–33. As stated in § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 1997, the payment amount for a "new" (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (see 62 FR 46019, August 29, 1997). Under the LTCH PPS, those "new" LTCHs that meet the definition of "new" under § 413.40(f)(2)(ii) and that have their first cost reporting period as a LTCH beginning prior to October 1, 2002, will be paid under the transition methodology described in § 412.533.

As noted above and in accordance with § 412.533(d), new LTCHs will not participate in the 5-year transition from reasonable cost-based reimbursement to prospective payment. As we discussed in the August 30, 2002 final rule (67 FR 56040), the transition period is intended to provide existing LTCHs time to adjust to payment under the new system. Since these new LTCHs with their first cost reporting periods as LTCHs beginning on or after October 1, 2002, would not have received payment under reasonable cost-based reimbursement for the delivery of LTCH services prior to the effective date of the LTCH PPS, we do not believe that those new LTCHs require a transition period in order to make adjustments to their operations and capital financing, as will LTCHs that have been paid under the reasonable cost-based methodology.

VIII. Method of Payment

Under § 412.513, a Medicare LTCH patient is classified into a LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC–DRG is used to determine the Federal prospective payment that the LTCH will receive for the Medicare-covered Part A services the LTCH furnished during the Medicare patient's stay. Under § 412.541(a), the payment is based on the submission of the discharge bill. The discharge bill also provides data to allow for reclassifying the stay from payment at the full LTC–DRG rate to payment for a case as a short-stay outlier (under § 412.529) or as an interrupted stay (under § 412.531), or to determine if the case will qualify for a high-cost outlier payment (under § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information used to determine if an adjustment to the full LTC–DRG payment is necessary (for example, length of stay or interrupted stay status) are recorded by the LTCH on the Medicare patient's discharge bill and submitted to the Medicare fiscal intermediary for processing. The payment represents payment in full, under § 412.521(b), for inpatient operating and capital-related costs, but not for the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a Quality Improvement Organization (QIO), which are costs paid outside the LTCH PPS.

As under the previous reasonable cost-based payment system, under § 412.541(b), a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h) and may be eligible to receive accelerated payments as described in § 413.64(g).

For those LTCHs that are paid during the 5-year transition based on the blended transition methodology in § 412.533(a) for cost reporting periods that began on or after October 1, 2002, and before October 1, 2006, the PIP amount is based on the transition blend. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount is based on the estimated prospective payment for the year rather than on the estimated reasonable cost-based reimbursement. We exclude high-cost outlier payments that are paid upon submission of a discharge bill from the PIP amounts. In addition, Part A costs that are not paid for under the LTCH PPS, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, and the costs of photocopying and mailing medical records requested by a QIO, are subject to the interim payment provisions (§ 412.541(c)).

Under § 412.541(d), LTCHs with unusually long lengths of stay that are not receiving payment under the PIP method may bill on an interim basis (60 days after an admission and at intervals of at least 60 days after the date of the first interim bill) and should include any high-cost outlier payment determined as of the last day for which the services have been billed.

IX. MedPAC Recommendations/ Monitoring

The Medicare Payment Advisory Commission's (MedPAC's) June 2004 Report to the Congress: Variation and Innovation in Medicare, contained a chapter on "Defining Long-Term Care Hospitals." In this chapter, the Commission focused on a broad range of issues central to understanding LTCHs which, although rapidly increasing in number, is still the smallest of all provider categories, but the most costly to the Medicare program per beneficiary episode of care.

The Commission identified particular problems such as growth of the LTCH industry, and high payment rates that appear to result from current payment incentives. Specifically the report states, "[F]irst, the financial incentive of the acute and long-term care hospital PPSs are likely to encourage facilities to selectively retain and admit certain types of patients to minimize their costs. Acute hospitals have a financial incentive to transfer patients as quickly as possible if they are likely to become high-cost outliers (to avoid losses on those patients). LTCHs have an incentive to admit patients with a given diagnosis who are likely to require fewer resources. Second, as the number of LTCHs grows, facilities may find it increasingly difficult to find patients who truly require LTCH-level care; this would lead to an increase in lower severity patients being cared for in LTCHs and higher Medicare spending. Finally, LTCH care is costly. The per case base rate in $37,000 and payments can be as high as $115,000 per case for the most complex patients." (pp. 127–8)

The Commission also examined LTCHs in the June 2003 Report to the Congress, entitled, "Monitoring post-acute care." Citing that Report, the Commission compared beneficiaries treated in LTCHs and other settings and determined that based on "the 11 most common diagnoses in LTCHs, using descriptive analysis and controlling for diagnosis related group (DRG) and severity of illness * * * that patients in market areas with LTCHs had similar acute hospital lengths of stay [preceding the LTCH stay] whether they used these facilities or not." Further, "[p]atients who used LTCHs were three to five times less likely to use skilled nursing facility (SNF) care, suggesting that SNFs

and long-term care hospitals may be substitutes." The June 2004 Report had also noted that "* * * Medicare pays more for patients treated in LTCHs, compared with patients not treated in them", but also concluded that this study, as well as the rapid and continuing growth in the number of LTCHs, the corresponding increases in Medicare spending, combined with the markedly uneven distribution of LTCHs throughout the country, raised additional issues for further research. (p. 122)

In its June 2004 Report to the Congress, the Commission reported the results of this subsequent research, both qualitative and quantitative, which focused on the following questions: What role do long-term care hospitals play in providing care?; Where are clinically similar patients treated in areas without long-term care hospitals?; and How do Medicare payments and outcomes compare for LTCH patients versus those in other settings? (p. 122). The Commission's research utilized structured interviews with health care providers and hospital administrators; site visits and clinical presentations; and quantitative analyses of markets with and without LTCHs and patient-level analyses to examine outcomes and per-episode impact on Medicare costs. Responses to these questions included the following assertions:

- LTCHs provide post-acute care to a small number of medically complex patients who are more stable than patients in an intensive care unit (ICU) but may still have unresolved underlying complex medical conditions.
- The use of LTCHs is associated with certain diagnoses, severity levels and the proximity of the facility.
- In areas without LTCHs, acute hospitals and SNFs are the principal substitutes of LTCHs.
- When LTCH care is not targeted to patients most likely to need this level of care, care for patients at a LTCH is more costly to Medicare than for similar patients in alternative settings. Conversely, when LTCH care is targeted to patients most likely to need this level of care, costs for those patients appear to be comparable to costs for those who use other settings (and costs for LTCH patients with tracheostomies save Medicare money) in large part because of fewer acute hospital readmissions for those patients. (pp 121–134)

The Commission's interpretations of its qualitative and quantitative research findings led to two specific recommendations:

"5A—The Congress and the Secretary should define long-term care hospitals by facility and patient criteria that ensure that patients admitted to these facilities are medically complex and have a good chance at improvement.

- Facility-level criteria should characterize this level of care by features such as staffing, patient evaluation and review processes, and mix of patients.
- Patient-level criteria should identify specific clinical characteristics and treatment modalities.

5B—The Secretary should require the Quality Improvement Organizations to review long-term care hospital admissions for medical necessity and monitor that these facilities are in compliance with defining criteria." (p. 120).

Since the publication of MedPAC's recommendations, we have discussed the implications of the Report with several trade associations that represent different facets of the LTCH industry (for example, older non-profit LTCHs; a for-profit chain that specializes in a particular case-mix; another for-profit chain which functions mainly in the HwH model).

In response to the recommendation in MedPAC's June 2004 Report that the Secretary examine defining LTCHs by facility and patient criteria, we have awarded a contract to Research Triangle Institute (RTI), International for a thorough examination of the Commission's recommendations based on the performance of a wide variety of analytic tasks using CMS data files, and also utilizing information collected from physicians, providers, and LTCH trade associations. This contract, "Long Term Care Hospital (LTCH) Payment System Refinement/Evaluation," will assist (CMS) in researching MedPAC's recommendations regarding the appropriate and cost-effective use of LTCHs in the Medicare program. With the recommendations of MedPAC's June 2004 Report to Congress as a point of departure, RTI, International will evaluate patient or facility level characteristics for LTCHs in order to identify and distinguish the role of these hospitals as a Medicare provider. This effort will be multi-faceted. Claims analysis of patients treated by LTCHs, as well as outlier patients treated at acute care hospitals will provide information to help direct this work, and several additional types of data sources will be used to evaluate these two issues, including administrative data such as Medicare claims as well as primary data collected through interviews, and a secondary analysis of existing regulatory requirements. As they gather information for the purposes of determining the feasibility of establishing LTCH patient and facility-level criteria, our contractor has been directed to include information from representatives, along with other stake-holders in the LTCH industry. Additionally, the contractor will examine the present role of QIOs in the Medicare program, focusing on their responsibilities regarding the LTCH PPS, as well as the potential for an expanded QIO role as suggested by MedPAC's recommendations. The goals of this research will be to document current practices related to the MedPAC recommendations, both in terms of provider certification, quality reviews, and hospital practice patterns.

Specifically, the project itself will be completed in two phases. Phase I, which is presently being undertaken by the contractor, focuses on an analysis of LTCHs within the current Medicare system, their history as participating providers, their case-mix, the criteria used by QIOs to determine the appropriateness of treatment in LTCHs, and where similar patients are treated in areas that lack LTCHs. Prior analyses of these issues by other contractors will be utilized as well as preliminary discussions with MedPAC, other researchers, and the QIOs. Building on the work of Phase I, Phase II will continue to address the feasibility of MedPAC's proposed criteria by first investigating the appropriateness of patient level criteria to determine whether there are distinctions between patients treated in LTCHs and other types of potential substitute providers (with particular attention to varying outcomes). Medicare claims data will be utilized for comparisons of LTCH patients and long-stay patients who are treated in acute care hospitals that have attained high cost outlier status. A separate analysis will be made for a subset of LTCH patients with diagnoses that are typically treated in IRFs. The contractor is then planning interviews with QIOs for the purpose of gathering information on assessment measures for each setting. Comparisons of these instruments will be made across regions for their usefulness as standardized patient screening or assessment tools. The contractors then plan to evaluate the outcomes of their research in the context of MedPAC's recommendation for the development of facility-level criteria, using claims, interviews, and document reviews. To the extent the analyses suggest that changes should be made that may affect LTCH payments, LTCH discharges, or the definition of LTCH, such proposed changes could necessitate some statutory or regulatory changes.

In the August 30, 2002 final rule (67 FR 56014), we described an on-going monitoring component of the new LTCH

PPS that would enable us to evaluate the impact of the new payment policies. Specifically, we discussed on-going analysis of the various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based PPS. To this end, we have designed system features utilizing MedPAR data that will enable us and the fiscal intermediary to track beneficiary movement to and from a LTCH and track LTCH patients to and from another Medicare provider. We also stated our intent to collect and interpret data on changes in average lengths of stay under the LTCH PPS for specific LTC–DRGs and the impact of these changes on the Medicare program. As part of our data analysis, we have revisited a number of our original and even pre-LTCH PPS policies in order to address what we believed were behaviors by certain LTCHs that have led to inappropriate Medicare payments. In recent **Federal Register** publications, for example, we have proposed and subsequently finalized revisions to the interruption of stay policy (69 FR 25692, May, 2004), and we established a payment adjustment for LTCH HwHs and satellites (69 FR 49191, August 11, 2004).

Also, in the June 6, 2003 final rule (68 FR 34157), we explained that, given that the only requirement that distinguishes a LTCH from other acute care hospitals is an average inpatient length of stay of greater than 25 days, we continue to be concerned about the extent to which LTCH services and patients differ from those services and patients treated in other Medicare covered settings (for example, SNFs and IRFs) and how the LTCH PPS will affect the access, quality, and costs across the health care continuum. Thus, we will be monitoring trends in the supply and utilization of LTCHs and Medicare's costs in LTCHs relative to other Medicare providers. For example, we intend to conduct medical record reviews of Medicare patients to monitor changes in service use (ventilator use, for example) over a LTCH episode of care and to assess patterns in the average length of stay at the facility level.

We also are collecting data on patients staying for periods of 6 months or longer in LTCHs and believe that QIOs will be evaluating whether or not such extensive stays may be indicative of LTCH patients who could be more appropriately served at a SNF.

As we discussed in the June 6, 2003 final rule (68 FR 34157), the MedPAC endorsed this monitoring activity as a primary aspect of the design and on-going functioning of the LTCH PPS. Furthermore, as discussed earlier, the Commission, in its June, 2004 Report to the Congress, recommended that we develop facility and patient criteria for LTCH admission and treatment and require a review by QIOs to evaluate whether LTCH admissions meet criteria for medical necessity once the recommended facility and patient criteria are established.

The involvement of QIOs in the LTCH PPS was established at the outset of the system at § 412.508, and was described in the August 30, 2002 final rule (67 FR 55975). Specific activities for QIOs regarding LTCHs are included in contracts awarded by our Office of Clinical Standards and Quality (OCSQ) detailing their scope(s) of work among which are reviewing random samples of LTCH records for medical necessity and coding for generating national payment error estimates; proposing projects to reduce improper payments utilizing the national payment error cause analysis or their own data collection. One direction that is being explored by OCSQ for this type of project is the identification of LTCHs that have specific diagnoses codes related to medically unnecessary admissions, or perhaps high levels of short-stay outliers.

In January 2004, QIOs began reviewing medical records for LTCH claims for the specific purpose of estimating a national payment error rate. Presently, QIOs review 116 LTCH cases each month for admission necessity, for acute care admission, and coding. A cause analysis will be done after the first year's sampling to discern patterns of improper payments for admission necessity and coding. The payment error estimates and some of these analyses will be included in the annual fee-for-service error report.

We continue to be concerned that our policies must assure that LTCHs only treat patients for whom the LTCH level of care is appropriate in order to ensure that Medicare is a prudent purchaser of these very costly services. In addressing one aspect of the issue of whether patients in LTCHs truly need hospital-level of care, beginning in October 2004 and slated to end in July 2005 OCSQ has undertaken a study of LTCH short-stay outliers. Under the short-stay outlier policy at § 412.529, when a LTCH patient stay is considered a short-stay outlier for Medicare payment purposes, the LTCH receives an adjusted (generally lower) payment when the covered days of care do not exceed 5/6 of the (geometric) average length of stay for the particular LTC–DRG assigned to the case. The study evaluates the extent of short-stay outliers and the possibility of retention of patients by the LTCH when the LTCH patient no longer requires hospital-level of care and could be effectively served in a SNF. Due to possible reductions in payment combined with a need to maintain an average length of stay of greater than 25 days to remain an LTCH, we believe that LTCHs may be retaining these patients beyond the short-stay outlier threshold in order to increase Medicare payments. The three QIOs located in States which house the majority of LTCHs are conducting reviews on six months of records from the monthly random sample for this study in order to assess this situation and to determine whether and to what extent patients are being retained at the LTCH beyond their need for hospital-level care and whether retention can be linked to the increased payment for patients exceeding the short-stay outlier threshold. If it is determined that retaining LTCH patients unnecessarily beyond the short-stay outlier threshold is a significant payment issue, OCSQ plans to add this review type to the standard QIO LTCH review.

In addition to existing tasks and the above research study on short-stay outliers, in accordance with the goals of our on-going monitoring program as well as MedPAC's June 2003 recommendations, we believe the QIO's findings will be invaluable in both identifying the most appropriate type of patients for treatment at a LTCH as well as to begin to explore measures of cost-effectiveness for LTCH services.

Currently, we do not require LTCHs to submit any clinical or other quality data, thus, any measurement activity must be based solely on claims. General concerns that we have raised since the establishment of the LTCH PPS, however, and the analysis and very specific recommendations in the MedPAC's June 2004 Report have led us to question what level of additional data beyond current claims would be required for the creation of clinical quality measures for LTCHs. Furthermore, we are presently evaluating whether CMS's Quality Measurement and Health Assessment Group (QMHAG) will need to build a quality measurement program for the LTCH setting. (A quality measurement program would generally establish processes or a group of tasks or processes which, if completed satisfactorily, would indicate a level of compliance with program goals. Clinical quality measures for acute care hospitals based on voluntary data submission and for nursing homes and home health

agencies based on a mandatory standardized data submission are currently being generated.)

As in the acute care hospital, in order to establish a robust set of clinical quality measures for LTCHs, the domains would have to reach a broad population, be based on medical evidence, be scientifically valid, and be actionable. We are also considering measures that cut across other care delivery sites and are broadly focused around areas such as medication management or patient safety. We anticipate a mix of process and outcomes measures that would reflect expected care for each setting, but we also believe that the measures should not ultimately be limited to clinical measures, but should include measures of institutional procedures related to delivery of care systems and patients' actual experience of care. Moreover, if these measures are to be used to relate payment to outcome or performance, it is essential that the measures be adequately risk adjusted.

Therefore, in addition to pursuing our on-going monitoring program under the direction of our Office of Research, Development, and Information (ORDI), existing QIO monitoring and studies, and our considerations of expanding the QIO role in the LTCH PPS, as noted above, we have awarded a contract to RTI International for a thorough examination of the feasibility of implementing MedPAC's recommendations that are contained in the June 2004 Report to the Congress. The research contract was funded for FY 2005 and we anticipate that we will be able to include some preliminary findings in the FY 2006 final rule.

X. Collection of Information Requirements

The collection requirements associated with this proposed rule are exempt from the PRA as stipulated under P.L. 100–203, Section 4201.

XI. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption "PROPOSED ADJUSTED FEDERAL PROSPECTIVE PAYMENTS" at the beginning of your comments.]

A. Introduction

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). In this proposed rule, we are using the most recent estimate of the LTCH PPS market basket, updated claims data, and updated wage index values to estimate proposed payments for the 2006 LTCH PPS rate year. Based on the best available data for 261 LTCHs, we estimate that the proposed 3.1 percent increase to the standard Federal rate for the 2006 LTCH PPS rate year, in conjunction with the proposed decrease in fixed-loss amount (discussed in section IV.C.3. of this proposed rule) and the proposed slight decrease in the transition period budget neutrality offset (discussed in section IV.C.7. of this proposed rule), would result in an increase in payments from the 2005 LTCH PPS rate year of $159 million for the 261 LTCHs. (Section IV.C.7. of this proposed rule includes an estimate of Medicare program payments for LTCH services.) Because the combined distributional effects and costs to the Medicare program are estimated to be greater than $100 million, this proposed rule is considered a major economic rule, as defined above.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $26 million or less in any 1 year. For purposes of the RFA, all hospitals are considered small entities according to the Small Business Administration's latest size standards with total revenues of $26 million or less in any 1 year (for further information, see the Small Business Administration's regulation at 65 FR 69432, November 17, 2000). Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary LTCHs. Therefore, we assume that all LTCHs are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

Currently, our database of 261 LTCHs includes the data for 62 non-profit (voluntary ownership control) LTCHs and 191 proprietary LTCHs. The remaining 8 LTCHs are Government owned and operated. (See Table II.) The impact of the proposed changes for the 2006 LTCH PPS rate year are discussed below in section XII.B.4.c of this proposed rule. The provisions of this proposed rule represent a 5.5 percent increase in estimated proposed payments in the 2006 LTCH PPS rate year for all LTCHs (as shown in Table II below). We do not expect the proposed incremental increase of 5.5 percent to the LTCH PPS Medicare payment rates, including the 0.1 percent incremental increase due to the proposed wage index changes (discussed in section IV.C.1. of this proposed rule), to have a significant adverse effect on the overall revenues of most LTCHs. In addition, LTCHs also provide services to (and generate revenue from) patients other than Medicare beneficiaries. Accordingly, we certify that this proposed rule would not have a significant impact on a substantial number of small entities, in accordance with RFA.

3. Impact on Rural Hospitals

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a proposed or final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this proposed rule would not have a adverse impact on rural hospitals based on the data of the 16 rural hospitals in our database of the 261 LTCHs for which data were available.

4. Unfunded Mandates

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more.

This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it result in expenditures by the private sector of $110 million or more in any one year.

5. Federalism

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.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule would not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law, based on the 8 State and local LTCHs in our database of 261 LTCHs for which data were available.

B. Anticipated Effects of Proposed Payment Rate Changes

We discuss the impact of the proposed payment rate changes in this proposed rule below in terms of their fiscal impact on the Medicare budget and on LTCHs.

1. Budgetary Impact

Section 123(a)(1) of Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) requires that the PPS developed for LTCHs "maintain budget neutrality." Therefore, in calculating the standard Federal rate under § 412.523(d)(2), we set total payments for FY 2003 under the LTCH PPS so that aggregate payments under the LTCH PPS are estimated to equal to the amount that would have been paid if this PPS had not been implemented. However, as discussed in greater detail in the August 30, 2002 final rule (67 FR 56033–56036), the FY 2003 LTCH PPS standard Federal rate ($34,956.15) was calculated as though all LTCHs would be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section IV.C.7. of this proposed rule, we apply a proposed budget neutrality offset to payments to account for the monetary effect of the 5-year transition to full prospective payment under the LTCH PPS and the policy to permit LTCHs to elect, during the transition, to be paid based on 100 percent of the proposed standard Federal rate rather than a blend of proposed Federal prospective payments and reasonable cost-based payments. The amount of the proposed offset is equal to 1 minus the ratio of the estimated payments based on 100 percent of the LTCH PPS Federal rate to the projected total Medicare program payments that would be made under the transition methodology and the option to elect payment based on 100 percent of the Federal prospective payment rate.

2. Impact on Providers

The basic methodology for determining a LTCH PPS payment is set forth in the regulations at § 412.515 through § 412.525. In addition to the basic LTC–DRG payment (standard Federal rate × LTC–DRG relative weight), we make adjustments for differences in area wage levels, cost-of-living adjustment for Alaska and Hawaii, and short-stay outliers. Furthermore, LTCHs may also receive high-cost outlier payments for those cases that qualify based on the threshold established each rate year. Section 412.533 provides for a 5-year transition to fully prospective payments from payment based on reasonable cost-based methodology. During the 5-year transition period, payments to LTCHs are based on an increasing percentage of the LTCH PPS Federal rate and a decreasing percentage of payment based on reasonable cost-based methodology. Section 412.533(c) provides for a one-time opportunity for LTCHs to elect payments based on 100 percent of the LTCH PPS Federal rate.

In order to understand the impact of the proposed changes to the LTCH PPS discussed in this proposed rule on different categories of LTCHs for the 2006 LTCH PPS rate year, it is necessary to estimate payments per discharge under the LTCH PPS rates and factors for the 2005 LTCH PPS rate year (*see* the May 7, 2005 final rule; 68 FR 25674) and to estimate payments per discharge that would be made under the proposed LTCH PPS rates and factors for the 2006 LTCH PPS rate year, as discussed in the preamble of this proposed rule. To this end, we determined the percent change in payments per discharge of estimated 2005 LTCH PPS rate year payments to estimated 2006 LTCH PPS rate year payments for each category of LTCHs. In addition, for each category of LTCHs, we have included the estimated percent change in payments per discharge resulting from the proposed LTCH PPS wage index changes (described in section IV.C.1. of this proposed rule). The proposed wage index changes for the 2006 LTCH PPS rate year include the proposed changes to the LTCH PPS wage index for the 2006 LTCH PPS rate year include the proposed change in the labor market area definitions, the proposed update in the wage index data, and the established phase-in of the LTCH PPS wage index adjustment, from 2005 LTCH PPS rate year (LTCHs' FYs 2004 and 2005 cost reporting periods) to the 2006 LTCH PPS rate year (LTCHs' FYs 2005 and 2006 LTCH cost reporting periods).

Hospital groups were based on characteristics provided in the Online Survey Certification and Reporting (System) (OSCAR) data, FYs 2000 through 2003 cost report data, and Provider Specific File data. Hospitals with incomplete characteristics were grouped into the "unknown" category. Hospital groups include:

—Location: Large Urban/Other Urban/ Rural
—Participation Date
—Ownership Control
—Census Region
—Bed Size

To estimate the impacts among the various categories of providers during the LTCH PPS transition period, it is imperative that reasonable cost-based methodology payments and prospective payments contain similar inputs. More specifically, in the impact analysis showing the impact reflecting the applicable transition blend percentages of prospective payments and reasonable cost-based methodology payments and the option to elect payment based on 100 percent of the proposed Federal rate (Table III below), we estimated payments only for those providers for whom we are able to calculate payments based on reasonable cost-based methodology. For example, if we did not have at least 2 years of historical cost data for a LTCH, we were unable to determine an update to the LTCH's target amount to estimate payment under reasonable cost-based methodology.

Using LTCH cases from the FY 2003 MedPAR file and cost data from FYs 1999 through 2002 to estimate payments under the current reasonable cost-based principles, we have obtained both case-mix and cost data for 261 LTCHs. Thus, for the impact analyses reflecting the applicable transition blend percentages and the option to elect payment based on 100 percent of the Federal rate (see Table II below), we used data from 261 LTCHs. While currently there are more than 300 LTCHs, the most recent growth is predominantly in for-profit LTCHs that provide respiratory and ventilator-dependent patient care. We believe that the discharges from the FY 2003 MedPAR data for the 261 LTCHs in our database provide sufficient representation in the LTC-DRGs containing discharges for patients who received respiratory and ventilator-

dependent care based on the relatively large number of LTCH cases in LTC–DRGs for these diagnoses. However, using cases from the FY 2003 MedPAR file we had case-mix data for 301 LTCHs. Cost data to determine current payments under reasonable cost-based methodology payments are not needed to simulate payments based on 100 percent of the proposed Federal rate. Therefore, for the impact analyses reflecting fully phased-in prospective payments (see Table III below), we used data from 301 LTCHs.

These impacts reflect the estimated "losses" or "gains" among the various classifications of LTCHs for the 2005 LTCH PPS rate year (July 1, 2004 through June 30, 2005) compared to the 2006 LTCH PPS rate year (July 1, 2005 through June 30, 2006). Prospective payments for the 2005 LTCH rate year were based on the standard Federal rate of $36,833.69 and the hospitals' estimated case-mix based on FY 2003 claims data. Estimated prospective payments for the 2006 LTCH PPS rate year are based on the proposed standard Federal rate of $37,975.53 and the same FY 2003 claims data.

3. Calculation of Prospective Payments

To estimate payments under the LTCH PPS, we simulated payments on a case-by-case basis by applying the payment policy for short-stay outliers (as described in section IV.C.4.b. of this proposed rule) and the proposed adjustments for area wage differences (as described in section IV.C.1. of this proposed rule) and for the cost-of-living for Alaska and Hawaii (as described in section IV.C.2. of this proposed rule). Additional payments would also be made for high-cost outlier cases (as described in section IV.C.3. of this proposed rule). As noted in section IV.C.6. of this proposed rule, we are not proposing to make adjustments for rural location, geographic reclassification, indirect medical education costs, or a disproportionate share of low-income patients because sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of these payment adjustments.

For estimated 2006 LTCH PPS rate year payments, we used the applicable proposed LTCH wage index values effective for discharges occurring on or after July 1, 2005 through June 30, 2006 (as shown in Tables 1 and 2 of the Addendum to this proposed rule) based on the proposed CBSA-based labor market area designations (described in section IV.C.1.c.1. of this proposed rule).

For estimated 2005 LTCH PPS rate year payments, we used the applicable LTCH wage index values effective for discharges occurring on or after July 1, 2004 through June 30, 2005 based on the existing MSA-based labor market area designations (see May 7, 2004 (69 FR 25685)). We adjusted for area wage differences for estimated 2005 LTCH PPS rate year payments by computing a weighted average of a LTCH's applicable wage index during the period from July 1, 2004, through June 30, 2005, because some providers may experience a change in the wage index phase-in percentage during that period. For cost reporting periods beginning on or after October 1, 2003 and before September 30, 2004 (FY 2004), the labor portion of the Federal rate was adjusted by two-fifths of the applicable "LTCH PPS wage index" (that is, the FY 2004 IPPS wage index data without taking into account geographic reclassification, under sections 1886(d)(8) and (d)(10)) of the Act). For cost reporting periods beginning on or after October 1, 2004 and before September 30, 2005 (FY 2005), the labor portion of the Federal rate was adjusted by three-fifths of the applicable LTCH PPS wage index. Therefore, during the 2005 LTCH PPS rate year (July 1, 2004 through June 30, 2005), a provider with a cost reporting period that began October 1, 2003, had 3 months of payments under the two-fifths wage index value and 9 months of payment under the three-fifths wage index value. For this provider, for the purposes of estimating payments for the impact analyses, we computed a blended wage index of 25 percent (3 months/12 months) of the two-fifths wage index value and 75 percent (9 months/12 months) of the three-fifths wage index value. The applicable LTCH PPS wage index values for the 2005 LTCH PPS rate year are shown in Tables 1 and 2 of the Addendum to the May 7, 2004 final rule (69 FR 25722–25741).

For estimated 2006 LTCH PPS rate year payments, we used the applicable proposed LTCH wage index values effective for discharges occurring on or after July 1, 2005 through June 30, 2006 (as shown in Tables 1 and 2 of the Addendum to this proposed rule) based on the proposed CBSA-based labor market area designations (described in section IV.C.1.c.1. of this proposed rule). Because some providers may experience a change in the wage index phase-in percentage during that period, we adjusted for area wage differences for estimated 2006 LTCH PPS rate year payments by computing a weighted average of a LTCH's applicable wage index during the period from July 1, 2005, through June 30, 2006. For cost reporting periods that began on or after October 1, 2004 and before September 30, 2005, the labor portion of the Federal rate is adjusted by three-fifths of the applicable LTCH PPS wage index (that is, as discussed in section IV.C.1. of this proposed rule, the FY 2005 IPPS acute care hospital wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act). For cost reporting periods beginning on or after October 1, 2005 and before September 30, 2006, the labor portion of the Federal rate will be adjusted by four-fifths of the applicable LTCH PPS wage index. The proposed applicable LTCH PPS wage index values for the 2006 LTCH PPS rate year are shown in Tables 1 and 2 of the Addendum to this proposed rule.

For estimated 2005 LTCH PPS rate year payments, for those LTCHs projected to receive payment under the transition blend methodology, we also calculated payments using the applicable transition blend percentages. During the 2005 LTCH PPS rate year, based on the transition blend percentages set forth in § 412.533(a), some providers may experience a change in the transition blend percentage during the period from July 1, 2004 through June 30, 2005. For example, during the period from July 1, 2004 through June 30, 2005, a provider with a cost reporting period beginning on October 1, 2003 (which is paid under the 60/40 transition blend (60 percent of payments based on reasonable cost-based methodology and 40 percent of payments under the LTCH PPS) beginning October 1, 2003) has 3 months (July 1, 2004 through September 30, 2004) under the 60/40 blend and 9 months (October 1, 2004 through June 30, 2005) of payment under the 40/60-transition blend (40 percent of payments based on reasonable cost-based methodology and 60 percent of payments under the LTCH PPS for cost reporting periods beginning during FY 2005). (The 40 percent/60 percent blend will continue until the provider's cost reporting period beginning on October 1, 2005 (FY 2006).)

Similarly, during the 2006 LTCH PPS rate year, based on the transition blend percentages set forth in § 412.533(a), some of the providers paid under the transition blend methodology may experience a change in the transition blend percentage during the period from July 1, 2005 through June 30, 2006. For example, during the period from July 1, 2005 through June 30, 2006, a provider with a cost reporting period beginning on October 1, 2004 (which is paid under

the 40/60 transition blend would have 3 months (July 1, 2005 through September 30, 2005) under the 40/60 blend and 9 months (October 1, 2005 through June 30, 2006) of payment under the 20/80-transition blend (20 percent of payments based on reasonable cost-based methodology and 80 percent of payments under the LTCH PPS for cost reporting periods beginning during FY 2006). (The 20 percent/80 percent blend will continue until the provider's cost reporting period beginning on October 1, 2006 (FY 2007).)

In estimating blended transition payments, we estimated payments based on the reasonable cost-based methodology, in accordance with the requirements at section 1886(b) of the Act. For those providers who have not already made the election (as determined from PSF data) to be paid based on 100 percent of the Federal rate, we compared the estimated blended transition payment to the LTCH's estimated payment if it would elect payment based on 100 percent of the Federal rate. If we estimated that the LTCH would be paid more based on 100 percent of the Federal rate, we assumed that it would elect to bypass the transition methodology and to receive payments based on 100 percent of prospective payment.

Then we applied the budget neutrality offset to payments to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments (established in the August 30, 2002 final rule (67 FR 56034)). In estimating 2005 LTCH PPS rate year payments, we applied the 0.5 percent budget neutrality offset to payments to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments (*See* the May 7, 2004 final rule (68 FR 25674)) to each LTCH's estimated payments under the LTCH PPS for the 2005 LTCH PPS rate year. Similarly, in estimating 2006 LTCH PPS rate year payments, we applied the proposed 0.2 percent budget neutrality offset to payments to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments (*see* section IV.C.7 of this proposed rule) to each LTCH's estimated payments under the LTCH PPS for the 2006 LTCH PPS rate year. The impact shown below in Table II is based on our projection of using the best available data that approximately 6 percent of LTCHs would be paid based on the transition blend methodology or would elect payment based on 100 percent of the Federal rate.

In Table III below, we also show the impact if the LTCH PPS were fully implemented; that is, as if there were an immediate transition to fully Federal prospective payments under the LTCH PPS for the 2005 LTCH PPS rate year and the 2006 LTCH PPS rate year. Accordingly, in the impact analysis shown in Table III., the respective budget neutrality adjustments to account for the 5-year transition methodology on LTCHs' Medicare program payments for the 2005 and 2006 LTCH PPS rate years (0.5 percent and the proposed 0.2 percent, respectively) were not applied to LTCHs' estimated payments under the LTCH PPS.

Tables II and III below illustrate the aggregate impact of the payment system among various classifications of LTCHs.

- The first column, LTCH Classification, identifies the type of LTCH.
- The second column lists the number of LTCHs of each classification type.
- The third column identifies the number of long-term care cases.
- The fourth column shows the estimated payment per discharge for the 2005 LTCH PPS rate year.
- The fifth column shows the estimated payment per discharge for the proposed 2006 LTCH PPS rate year.
- The sixth column shows the percent change in estimated LTCH PPS payments based on the proposed wage index changes from the 2005 LTCH PPS rate year to the proposed 2006 LTCH PPS rate year (as discussed in section IV.C.1. of this proposed rule).
- The seventh column shows the percent change of 2005 LTCH PPS rate year estimated payments compared to the proposed 2006 LTCH PPS rate year estimated payments for all proposed changes (as discussed in the preamble of this proposed rule).

BILLING CODE 4120–01–P

Table II.--Projected Impact Reflecting Applicable Transition Blend Percentages of Prospective Payments and Reasonable Cost-Based (TEFRA) Payments and Option to Elect Payment Based on 100 Percent of the Federal Rate[1] (Estimated 2005 LTCH PPS Rate Year Payments Compared to Estimated Proposed 2006 LTCH PPS Rate Year Payments)

LTCH Classification	Number of LTCHs	Number of LTCH Cases	Average 2005 LTCH PPS Rate Year Payment Per Case[2]	Average 2006 LTCH PPS Rate Year Payment Per Case[3]	Percent Change from RY 2005 to RY 2006 for Wage Index Changes[4]	Percent Change from RY 2005 to RY 2006 for All Changes[5]
All Providers	261	102,304	$28,437	$29,989	0.1	5.5
BY LOCATION:						
Rural	16	4,685	$26,423	$27,123	-2.5	2.6
Urban	245	97,619	$28,533	$30,127	0.2	5.6
Large	105	33,065	$27,588	$28,856	-0.6	4.6
Other	140	64,554	$29,018	$30,777	0.6	6.1
BY PARTICIPATION DATE:						
Before October 1983	15	7,730	$23,759	$25,357	1.3	6.7
October 1983 - September 1993	44	22,565	$28,435	$30,053	0.5	5.7
October 1993 - September 2002	202	72,009	$28,939	$30,466	-0.1	5.3
BY OWNERSHIP CONTROL:						
Voluntary	62	23,629	$27,846	$29,426	0.3	5.7
Proprietary	191	76,316	$28,716	$30,285	0.1	5.5
Government	8	2,359	$25,326	$26,047	-1.5	2.8
BY CENSUS REGION:						
New England	13	9,556	$24,100	$25,840	1.7	7.2
Middle Atlantic	18	6,409	$28,046	$29,281	-0.5	4.4
South Atlantic	25	8,873	$31,065	$32,464	-0.3	4.5
East North Central	50	14,871	$31,599	$33,345	0.3	5.5
East South Central	15	4,516	$29,506	$30,973	-0.5	5.0
West North Central	17	4,860	$31,167	$32,709	0.0	4.9
West South Central	90	41,406	$26,557	$27,922	-0.4	5.1
Mountain	20	5,391	$28,856	$30,585	0.6	6.0
Pacific	13	6,422	$33,274	$35,757	1.7	7.5
BY BED SIZE:						
Beds: 0 - 24	23	3,507	$29,826	$31,420	-0.5	5.3
Beds: 25 - 49	128	34,207	$28,710	$30,155	-0.3	5.0
Beds: 50 - 74	37	13,696	$29,959	$31,488	0.0	5.1
Beds: 75 - 124	37	17,318	$28,127	$29,562	0.0	5.1
Beds: 125 - 199	24	20,221	$27,281	$28,824	0.4	5.7
Beds: 200+	12	13,355	$27,962	$29,969	1.2	7.2

[1] These calculations take into account that some providers may experience a change in the LTCH PPS blend percentage changes during the 2005 and 2006 LTCH PPS rate years. For example, during the period of July 1, 2005 through June 30, 2006, a provider with a cost reporting period beginning October 1, 2006 would have 3 months (July 1, 2005 through September 30, 2005) of payments under the 40/60 blend (3/5ths wage index) and 9 months (October 1, 2005 through June 30, 2006) of payment under the 20/80 blend (4/5ths wage index).

[2] Estimated average payment per case for the 12-month period of July 1, 2004 through June 30, 2005.

[3] Estimated average payment per case for the 12-month period of July 1, 2005 through June 30, 2006.

[4] Percent change in estimated payments per discharge based on the 2005 LTCH PPS rate year wage index (as established in the May 7, 2004 final rule) compared to the proposed 2006 LTCH PPS rate year wage index (as proposed in section IV.C.1. this proposed rule), including the proposed change in the labor market area definitions, the proposed update in the wage index data and the progression of the phase-in of the LTCH PPS wage index adjustment from 2005 LTCH PPS rate year (FYs 2004 and 2005 LTCHs' cost reporting periods) to the 2006 LTCH PPS rate year (as described in section IV.C.1.a. of this proposed rule).

[5] Percent change in estimated payments per discharge from the 2005 LTCH PPS rate year (as established in the May 7, 2004 final rule) to the 2006 LTCH PPS rate year (as discussed in this proposed rule).

Table III.--Projected Impact Reflecting the Fully Phased-In LTCH PPS Prospective Payments (Estimated 2005 LTCH PPS Rate Year Payments Compared to Estimated Proposed 2006 LTCH PPS Rate Year Payments)

LTCH Classification	Number of LTCHs	Number of LTCH Cases	Average 2005 LTCH PPS Rate Year Payment Per Case[2]	Average 2006 LTCH PPS Rate Year Payment Per Case[3]	Percent Change from RY 2005 to RY 2006 for Wage Index Changes[4]	Percent Change from RY 2005 to RY 2006 for All Changes[5]
All Providers	301	108,136	$28,436	$29,975	-0.2	5.4
BY LOCATION:						
Rural	22	5,257	$25,959	$26,956	-2.3	3.8
Urban	279	102,879	$28,563	$30,129	-0.1	5.5
Large	125	35,035	$27,753	$28,999	-0.9	4.5
Other	154	67,844	$28,981	$30,713	0.3	6.0
BY PARTICIPATION DATE:						
Before October 1983	17	7,766	$23,827	$25,410	1.2	6.6
October 1983 - September 1993	45	22,611	$28,308	$29,928	0.1	5.7
October 1993 - September 2002	209	74,262	$28,961	$30,472	-0.4	5.2
After October 2002	30	3,497	$28,361	$29,854	-0.5	5.3
BY OWNERSHIP CONTROL:						
Voluntary	69	25,093	$27,839	$29,467	0.0	5.8
Proprietary	219	80,098	$28,827	$30,352	-0.2	5.3
Government	10	2,431	$23,500	$24,831	-0.5	5.7
Unknown	3	514	$20,019	$20,317	-2.4	1.5
BY CENSUS REGION:						
New England	15	9,592	$24,179	$25,875	1.5	7.0
Middle Atlantic	21	6,962	$27,636	$28,802	-0.9	4.2
South Atlantic	31	9,471	$30,933	$32,551	-0.2	5.2
East North Central	56	15,361	$31,829	$33,491	-0.1	5.2
East South Central	18	4,735	$29,596	$31,011	-1.0	4.8
West North Central	17	4,860	$31,075	$32,680	-0.3	5.2
West South Central	108	45,079	$26,593	$27,947	-0.6	5.1
Mountain	22	5,654	$29,105	$30,835	0.3	5.9
Pacific	13	6,422	$33,368	$35,826	1.4	7.4
BY BED SIZE:						
Beds: 0 - 24	30	4,279	$29,073	$30,541	-1.0	5.0
Beds: 25 - 49	149	36,229	$28,936	$30,318	-0.6	4.8
Beds: 50 - 74	38	13,729	$29,690	$31,318	-0.2	5.5
Beds: 75 - 124	42	18,665	$28,074	$29,617	0.0	5.5
Beds: 125 - 199	25	21,329	$27,407	$28,939	0.0	5.6
Beds: 200+	14	13,391	$28,062	$30,007	1.0	6.9
Unknown	3	514	$20,019	$20,317	-2.4	1.5

[1] Estimated average payment per case for the 12-month period of July 1, 2004 through June 30, 2005.

[2] Estimated average payment per case for the 12-month period of July 1, 2005 through June 30, 2006.

[3] Percent change in estimated payments per discharge based on the 2005 LTCH PPS rate year wage index (as established in the May 7, 2004 final rule) compared to the proposed 2006 LTCH PPS rate year wage index (as proposed in section IV.C.1. this proposed rule), including the proposed change in the labor market area definitions, the proposed update in the wage index data and the progression of the phase-in of the LTCH PPS wage index adjustment from 2005 LTCH PPS rate year to the 2006 LTCH PPS rate year (as described in section IV.C.1.a. of the preamble of this proposed rule).

[4] Percent change in estimated payments per discharge from the 2005 LTCH PPS rate year (as established in the May 7, 2004 final rule) to the 2006 LTCH PPS rate year (as proposed in this proposed rule).

[5] Percent change in estimated payments per discharge from the 2005 LTCH PPS rate year (as established in the May 7, 2004 final rule) to the 2006 LTCH PPS rate year (as discussed in this proposed rule).

BILLING CODE 4120–01–C

4. Results

Based on the most recent available data (as described above for 261 LTCHs), we have prepared the following summary of the impact (as shown in Table II) of the LTCH PPS set forth in this proposed rule.

a. *Location.* We evaluated each LTCH's location (urban or rural) based on the proposed CBSA-based labor market area definitions described in section IV.C.1.c.1. of this proposed rule. Based on the most recent available data, the vast majority of LTCHs are in urban areas. Approximately 6 percent of the LTCHs are identified as being located in a rural area, and approximately 4.5 percent of all LTCH cases are treated in these rural hospitals. Impact analysis in Table II shows that for rural LTCHs the percent change in estimated payments per discharge for the 2006 LTCH PPS rate year would increase 2.6 percent in comparison to the 2005 LTCH PPS rate year from all of the proposed changes, which reflects the estimated 2.5 percent decrease in payments per discharge from the proposed wage index changes. The primary reason for the projected increase in payments per discharge for all proposed changes for rural LTCHs is a combination of the proposed 3.1 percent increase in the standard Federal rate and a projected increase in outlier payments as a result of the proposed decrease in outlier fixed-loss amount (discussed in section IV.C.3. of this proposed rule), which results in more cases qualifying as outlier cases and receiving additional outlier payments. This projected increase in estimated payments per discharge for rural LTCHs is partially offset by a projected decrease in payments per discharge as a result of the proposed changes in the wage index.

Rural LTCHs are projected to experience a relatively large decrease in payments due to the proposed wage index changes primarily because of the progression of the 5-year phase-in of the wage index adjustment. That is, because the wage index of most rural areas is less than 1.0, as rural LTCHs progress through the 5-year phase-in of the wage index adjustment (for example, the two-fifths wage index for cost reporting periods beginning during FY 2004 to the three-fifths wage index for cost reporting periods beginning during FY 2005), their wage index decreases, which results in a decrease in their payments. This would occur even if we had not proposed to revise the labor market area definitions based on OMB's CBSA designations. For example (as shown in Table 2 of the Addendum to this proposed rule), the proposed three-fifths wage index for rural Arizona of 0.9362 is less than the proposed two-fifths wage index for rural Arizona of 0.9574. In addition, we identified three LTCHs that are currently urban under the existing MSA-based labor market area designations that would become rural under the proposed new CBSA-based labor market designations, and as a result, are projected to experience a relatively larger decrease in payments per discharge due to the proposed changes in the wage index. (*See* Table II.)

For urban LTCHs, the percent change in estimated payments per discharge for the 2006 LTCH PPS rate year are projected to increase 5.6 percent in comparison to the 2005 LTCH PPS rate year from all proposed changes, which reflects a 0.2 percent increase from the proposed wage index changes. Payments per discharge for the 2006 LTCH PPS rate year are projected to increase 4.6 percent for large urban LTCHs in comparison to the 2005 LTCH PPS rate year from all of the proposed changes, including a projected 0.6 percent decrease from the proposed wage index changes. We project that 2006 LTCH PPS rate year payments per discharge would increase 6.1 percent in comparison to the 2005 LTCH PPS rate year for urban LTCHs, including a projected 0.6 percent increase for the proposed wage index changes.

As noted above and discussed in greater detail below, the projected increase in payments per discharge for all proposed changes for both large and other urban LTCHs is largely due to the proposed 3.1 percent increase to the standard Federal rate and a projected increase in outlier payments as a result of the proposed decrease in the outlier fixed amount. These projected increases in payments per discharge reflecting all proposed changes for LTCHs that are located in large urban areas are partially offset by a projected decrease in

payments per discharge for the proposed wage index changes. The projected decrease in payments per discharge based solely on the proposed wage index changes are largely due to the progression of the 5-year phase-in of the wage index adjustment, as explained above, since the majority of LTCHs are in large urban areas with wage index values that are slightly less than 1.0. Large urban LTCHs are projected to experience a decrease in payments per discharge for the proposed wage index changes because, in addition to the effect of the progression of the 5-year phase-in of the wage index adjustment, as explained above, the proposed wage index for a few large urban areas, such as Houston, Texas, would be slightly lower under the proposed CBSA-based labor market area designations than they would be under the existing MSA-based labor market area designations. (*See* Table II.)

As noted above, in addition to the proposed update to the standard Federal rate, the estimated percent increase in payments per discharge for all proposed changes from the 2005 LTCH PPS rate year to the 2006 LTCH PPS rate year is largely attributable to the decrease in the outlier fixed-loss amount (discussed in section IV.C.3. of this proposed rule). For the 2005 LTCH PPS rate year, the outlier fixed loss amount is $17,864 (as established in the May 7, 2004 final rule). Therefore, currently a case qualifies for an additional LTCH PPS outlier payment if the estimated cost of the case exceeds the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC–DRG and the fixed-loss amount of $17,864). For the 2006 LTCH PPS rate year, we are proposing an outlier fixed loss amount of $11,544. Therefore, a case would qualify for an additional LTCH PPS outlier payment if the estimated cost of the case exceeds the proposed outlier threshold (the sum of the adjusted proposed Federal LTCH payment for the LTC–DRG and the proposed fixed-loss amount of $11,544). Therefore, we estimate that more cases would qualify as outlier cases (the estimated cost of the case exceeds the proposed outlier threshold) and would receive outlier payments, thereby increasing total estimated payments per discharge. In the aggregate, LTCHs are not expected to experience a significant impact as a result of the proposed changes to the wage index. As discussed throughout this impact section, certain groups of hospitals are projected to benefit from the proposed changes to the wage index while other groups of LTCHs are projected to be negatively impacted by the proposed changes to the wage index. However, as a result of the aggregate effect of the proposed update to the standard Federal rate combined with the proposed decrease in the outlier fixed-loss amount, we estimate that all LTCH categories would experience an increase in payments.

b. *Participation Date.* LTCHs are grouped by participation date into three categories: (1) Before October 1983; (2) between October 1983 and September 1993; and (3) between October 1993 and September 2002. At this time, we do not have sufficient cost report data for any of the LTCHs that began participating in the Medicare program after October 2002 (the implementation of the LTCH PPS), and, therefore, they are not included in the impact analysis shown below in Table II.

Based on the most recent available data, the majority, approximately 77 percent, of the LTCH discharges are in LTCHs hospitals that began participating between October 1993 and September 2002, and we estimated that 2006 LTCH PPS rate year payments per discharge would increase 5.3 percent in comparison to the 2005 LTCH PPS rate year due to all proposed changes, which includes the estimated 0.1 percent decrease in payments per discharge due to the proposed wage index changes.

Approximately 22 percent of the discharges are in LTCHs that began participating in Medicare between October 1983 and September 1993, and 2006 LTCH PPS rate year payments per discharge are projected to increase 5.7 percent in comparison to the 2005 LTCH PPS rate year from all proposed changes, which includes the estimated 0.5 percent increase in payments per discharge from the proposed wage index changes. Payments per discharge for the 2006 LTCH PPS rate year are estimated to increase 6.7 percent in comparison to the 2005 LTCH PPS rate year for LTCHs that began participating before October 1983 from all proposed changes, including the estimated 1.3 percent increase in payments per discharge from the proposed wage index changes. This increase in projected payments per discharge from the proposed changes in the wage index for LTCHs that began participating before October 1983 is largely due to a combination of the proposed change to the CBSA-based labor market area definitions and the increase in the percentage of the wage index adjustment as required by the 5-year phase-in of the wage index adjustment (for example, two-fifths of the wage index adjustment for cost reporting periods beginning during FY 2004 increasing to three-fifths of the wage index adjustment for cost reporting periods beginning during FY 2005). (See Table II.)

In addition, as discussed above, these increases in payments for the 2006 LTCH PPS rate year are also due to the proposed decrease in the outlier fixed-loss amount (as discussed in section IV.C.3. of this proposed rule). As a result, more cases would qualify as outlier cases (the estimated cost of the case exceeds the proposed outlier threshold) and, therefore, would receive outlier payments, thereby increasing total estimated payments per discharge. As also noted above, in the aggregate LTCHs are not expected to experience a significant impact as a result of the proposed changes to the wage index. While certain groups of LTCHs are projected to benefit from the proposed changes to the wage index, other groups of LTCHs are projected to be negatively impacted by the proposed changes to the wage index.

c. *Ownership Control.* LTCHs are grouped into three categories based on ownership control type—(1) voluntary; (2) proprietary; and (3) government.

Based on the most recent available data, approximately 3 percent of LTCHs are government owned and operated. We project that for these government owned and operated LTCHs, 2006 LTCH PPS rate year payments per discharge would increase 2.8 percent in comparison to the 2005 LTCH PPS rate year from all proposed changes, including the estimated 1.5 percent decrease in payments per discharge from the proposed wage index changes. This estimated decrease in estimated payments per discharge for the proposed wage index changes is largely due to the current applicable percentage of the 5-year phase-in of the wage index adjustment, as explained above, since the majority of government run LTCHs are located in areas with wage index values that are less than 1.0. Because government owned and operated LTCHs are expected to experience a slight decrease in payments per discharge from the proposed changes to the wage index, we project that they would experience a slightly smaller increase in payments per discharge from all proposed changes as compared to other LTCHs.

We project that 2006 LTCH PPS rate year payments per discharge for voluntary and proprietary LTCHs would increase 5.7 percent and 5.5 percent, respectively, in comparison to the 2005 LTCH PPS rate year for all proposed changes, including the estimated 0.3 percent and 0.1 percent increase, respectively, in payments per discharge from the proposed wage index changes. As noted above, in addition to the

proposed update to the standard Federal rate, the estimated percent increase in payments per discharge for all proposed changes from the 2005 LTCH PPS rate year to the 2006 LTCH PPS rate year is largely attributable to the proposed decrease in outlier fixed loss amount (discussed in section IV.C.3. of this proposed rule), which would result in more cases qualifying as outlier cases (the estimated cost of the case exceeds the proposed outlier threshold) and, therefore, would receive additional outlier payments, thereby increasing total estimated payments per discharge. (See Table II.)

d. *Census Region.* Payments per discharge for the 2006 LTCH PPS rate year are estimated to increase for LTCHs located in all regions in comparison to the 2005 LTCH PPS rate year from all proposed changes. Of the nine census regions, we project that the increase in 2006 LTCH PPS rate year payments per discharge in comparison to the 2005 LTCH PPS rate year would be the largest for LTCHs in the Pacific and New England regions. Specifically, 2006 LTCH rate year payments per discharge for LTCHs in the Pacific and New England regions are projected to increase 7.5 percent and 7.2 percent, respectively, in comparison to the 2005 LTCH PPS rate year, which includes the estimated 1.7 percent increase from the proposed wage index changes for both areas. As explained above, these relatively large increases in payments from all proposed changes for the 2006 LTCH PPS rate year for LTCHs in the New England and Pacific regions are mostly attributable to the proposed decrease in the outlier fixed-loss amount (discussed in section IV.C.3. of this proposed rule), which results in more cases qualifying as outlier cases (the estimated cost of the case exceeds the proposed outlier threshold) and, therefore, would receive additional outlier payments, thereby increasing total estimated payments per discharge. Furthermore, in addition to the proposed update to the standard Federal rate, we believe that many LTCHs in the New England and Pacific regions would experience an increase in payments because of an the annual percentage increase of the phase-in of the wage index adjustment, (two-fifths of the applicable LTCH PPS wage index for cost reporting periods beginning on or after October 1, 2003; three-fifths of the applicable wage index for cost reporting periods beginning on or after October 1, 2004; and four-fifths of the applicable wage index for cost reporting periods beginning on or after October 1, 2005) since most of the LTCHs in these regions are located in areas that have a wage index value of greater than 1.0. (*See* Table II.).

We project that 2006 LTCH PPS rate year payments per discharge would increase the least for LTCHs in the MidAtlantic and South Atlantic regions in comparison to the 2005 LTCH PPS rate year for all changes (4.4 percent and 4.5 percent, respectively). We project that for LTCHs located in the Middle Atlantic and South Atlantic regions, 2006 LTCH PPS payments per discharge would decrease slightly in comparison to the 2005 LTCH PPS rate year from the proposed wage index changes (0.5 percent and 0.3 percent, respectively). We are projecting a slight decrease in payments per discharge from the proposed wage index changes, which results in a slightly lower percent increase in payments per discharge from all proposed changes, for LTCHs located in these regions because of the progression of the 5-year phase-in of the wage index adjustment. Specifically, many LTCHs located in these areas would have a wage index value of less than 1.0. (See Table II.)

e. *Bed Size.* LTCHs were grouped into six categories based on bed size—0–24 beds, 25–49 beds, 50–74 beds, 75–124 beds, 125–199 beds, and 200+ beds.

For all bed size categories, we are projecting an increase in 2006 LTCH PPS rate year payments per discharge in comparison to the 2005 LTCH PPS rate year from all proposed changes. Most LTCHs are in bed size categories where 2006 LTCH PPS rate year payments per discharge are projected to increase approximately 5 percent in comparison to the 2005 LTCH PPS rate year from all proposed changes.

We project that LTCHs with greater than 200 beds would have the largest increase in estimated 2006 LTCH PPS rate year payments per discharge in comparison to the 2005 LTCH PPS rate year from all proposed changes (7.2 percent), including the estimated increase from the proposed wage index changes of 1.2 percent. This increase in projected payments per discharge for all proposed changes for LTCHs with greater than 200 beds is largely due to a combination of the proposed 3.1 percent increase in the standard Federal rate, a projected increase in outlier payments resulting from the proposed decrease in outlier fixed amount, as explained above, and the increase in projected payment per discharge from the proposed wage index changes. This increase in projected payments per discharge from the proposed changes in the wage index for LTCHs with greater than 200 beds is largely due to a combination of the proposed change to the CBSA-based labor market area definitions and the increase in the percentage of the wage index adjustment as required by the 5-year phase-in of the wage index adjustment because most LTCHs with greater than 200 beds are located in an area with a wage index value of greater than 1.0. (See Table II.)

Payments per discharge for the 2006 LTCH PPS rate year for LTCHs with 0–24 beds and 25–49 beds are projected to increase in comparison to the 2005 LTCH PPS rate year from all proposed changes (5.3 percent and 5.0 percent, respectively), which includes the estimated decrease in payments per discharge from the proposed wage indexes changes (−0.5 percent and −0.3 percent, respectively). This slight decrease in estimated payments per discharge from the proposed wage index changes is largely due to the progression of the 5-year phase-in of the wage index adjustment (as explained above) since the majority of LTCHs with fewer than 50 beds are located in areas with a wage index value of less than 1.0. (See Table II.)

5. Effect on the Medicare Program

Based on actuarial projections, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years would be as follows:

LTCH PPS rate year	Estimated payments ($ in billions)
2006	$2.94
2007	2.90
2008	2.96
2009	3.08
2010	3.24

These estimates are based on the current estimate of the increase in the excluded hospital with capital market basket of 3.1 percent for the 2006 LTCH PPS rate year, 2.9 percent for the 2007, 2.7 for the 2008 LTCH PPS rate year, 2.9 percent for the 2009 LTCH PPS rate year and 2010 LTCH PPS rate years. We estimate that there would be a change in Medicare beneficiary enrollment of −4.9 percent in the 2006 LTCH PPS rate year, −6.5 percent in the 2007 LTCH PPS rate year, −1.1 percent in 2008 LTCH PPS rate year, 0.2 percent in the 2009 LTCH PPS rate year, 0.8 percent in the 2010 LTCH PPS rate year, and an estimated increase in the total number of LTCHs. (We note that, based on the most recent available data, our Office of the Actuary is projecting a decrease in Medicare fee-for-service Part A enrollment, in part, because of a projected increase in Medicare managed

care enrollment as a result of the implementation of several provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.)

Consistent with the statutory requirement for budget neutrality, as we discussed in the August 30, 2002 final rule that implemented the LTCH PPS, in developing the LTCH PPS, we intended for estimated aggregate payments under the LTCH PPS in FY 2003 would equal the estimated aggregate payments that would have been made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations used the best available data and necessarily reflected assumptions. As we collect data from LTCHs, we continue to monitor payments and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (that is, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). As discussed above in section IV.C.7. of the preamble of this proposed rule, because the LTCH PPS has only been implemented for about 2.5 years, due to the lag time in the availability of data, at this time, we still do not have sufficient new cost report and claims data generated under the LTCH PPS to enable us to conduct a comprehensive reevaluation of our FY 2003 budget neutrality calculations.

Section 123 of BBRA and section 307 of BIPA provide the Secretary with extremely broad authority in developing the LTCH PPS, including the authority for appropriate adjustments. In accordance with this broad authority, we may discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH PPS rates to maintain budget neutrality so that the effect of the difference between actual payments and estimated payments for the first year of LTCH PPS is not perpetuated in the PPS rates for future years. As discussed above in section IV.C.7. of this proposed rule, because the LTCH PPS was only recently implemented, we do not yet have sufficient complete data to determine whether such an adjustment is warranted.

6. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that paying prospectively for LTCH services will enhance the efficiency of the Medicare program.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table IV below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the increase in Medicare payments under the LTCH PPS as a result of the proposals presented in this proposed rule based on the data for 261 LTCHs in our database. All expenditures are classified as transfers to Medicare providers (that is, LTCHs).

TABLE IV.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2005 LTCH PPS RATE YEAR TO THE 2006 LTCH PPS RATE YEAR

[In millions]

Category	TRANSFERS.
Annualized Monetized Transfers.	$158.
From Whom To Whom?	Federal Government To LTCH Medicare Providers.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

In accordance with the discussion in this preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV, part 412 as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.22 is amended by revising paragraphs (e)(3) and (h)(5) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(e) * * *

* * * * *

(3) *Notification of co-located status.* A long-term care hospital that occupies space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital and that meets the criteria of paragraphs (e)(1) or (e)(2) of this section must notify its fiscal intermediary and CMS in writing of its co-location and identify by name, address, and Medicare provider number those hospital(s) with which it is co-located.

* * * * *

(h) * * *

* * * * *

(5) *Notification of co-located status.* A satellite of a long-term care hospital that occupies space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital and that meets the criteria of paragraphs (h)(1) through (h)(4) of this section must notify its fiscal intermediary and CMS in writing of its co-location and identify by name, address, and Medicare provider number, those hospital(s) with which it is co-located.

3. Section 412.525 is amended by revising paragraph (c) to read as follows:

§ 412.525 Adjustments to the Federal prospective Payments

* * * * *

(c) *Adjustments for area levels.* The labor portion of a long-term care hospital's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index (established by CMS), which reflects the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area as determined in accordance with paragraph (c)(1) or (c)(2) of this section) of the hospital compared to the national average level of hospital wages and wage-related costs. The appropriate wage index (established by CMS) is updated annually.

(1) For discharges occurring in cost reporting periods beginning on or after October 1, 2002 and occurring before July 1, 2005, the application of the wage index under the long-term care hospital prospective payment system is made on the basis of the location of the facility in an urban or rural area as defined in § 412.62(f)(1)(ii) and (f)(1)(iii), respectively.

(2) For discharges occurring on or after July 1, 2005, the application of the wage index under the long-term care hospital prospective payment system made on the basis of the location of the facility in an urban or rural area as

defined in § 412.64(b)(1)(ii)(A) through (C).

* * * * *

4. Section 412.531 is amended by revising paragraphs (b)(1)(i)(C) and (b)(1)(ii)(A)(*1*) to read as follows:

§ 412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) The number of days that a beneficiary spends away from a long-term care hospital during a 3-day or less interruption of stay under paragraph (a)(1) of this section during which the beneficiary receives a procedure that is grouped to a surgical DRG under the inpatient prospective payment system in an acute care hospital during the 2005 and 2006 long-term care hospital prospective payment system rate year is not included in determining the length of stay of the patient at the long-term care hospital.

* * * * *

(ii) * * *

(A) * * *

(*1*) For a 3-day or less interruption of stay under paragraph (a)(1) of this section in which a long-term care hospital discharges a patient to an acute care hospital and the patient's treatment during the interruption is grouped into a surgical DRG under the acute care inpatient hospital prospective payment system, for the LTCH 2005 and 2006 rate years, CMS also makes a separate payment to the acute care hospital for the surgical DRG discharge in accordance with paragraph (b)(1)(i)(C) of this section.

* * * * *

5. Section 412.532 is amended by revising paragraph (i) to read as follows:

§ 412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.

* * * * *

(i) A long-term care hospital or a satellite of a long-term care hospital that occupies space in a building used by another hospital, or SNF, or in one or more entire buildings located on the same campus as buildings used by another hospital or SNF and that meets the criteria of § 412.22(e)(1) or (e)(2) or 412.22(h)(1) through (h)(4) must notify its fiscal intermediary and CMS in writing of its co-location and identify by name, address, and Medicare provider number, those providers specified at paragraph (a) of this section with which it is co-located.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 14, 2005.

Mark McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 28, 2005.

Michael O. Leavitt,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

This addendum contains the tables referred to throughout the preamble to this proposed rule. The tables presented below are as follows:

Table 1.—Proposed Long-Term Care Hospital Proposed Wage Index for Urban Areas (based on Proposed CBSA-based Labor Market Area Designations) for Discharges Occurring from July 1, 2005 through June 30, 2006

Table 2.—Proposed Long-Term Care Hospital Proposed Wage Index for Rural Areas (based on Proposed CBSA-based Labor Market Area Designations) for Discharges Occurring from July 1, 2005 through June 30, 2006

Table 3.—FY 2005 LTC–DRG Relative Weights, Geometric Mean Length of Stay, and Short-Stay Five-Sixths Average Length of Stay for Discharges Occurring from July 1, 2005 through September 30, 2006. (Note: This is the same information provided in Table 11 of the August 11, 2004 IPPS final rule (69 FR 49738–49754, as revised in the October 7, 2004 IPPS correction notice, 69 FR 60266–60271), which has been reprinted here for convenience.)

Table 4.—A Listing of Long-Term Care Hospitals' State and County Location; Current Labor Market Area Designation; and Proposed New CBSA-based Labor Market Area Designation

BILLING CODE 4120–01–P

Table 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2005 THROUGH JUNE 30, 2006[1]

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7850	0.9140	0.8710	0.8280
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.4280	0.7712	0.6568	0.5424
10420	Akron, OH Portage County, OH Summit County, OH	0.9055	0.9622	0.9433	0.9244
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	1.1266	1.0506	1.0760	1.1013
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8650	0.9460	0.9190	0.8920
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	1.0485	1.0194	1.0291	1.0388
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8171	0.9268	0.8903	0.8537

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9501	0.9800	0.9701	0.9601
11020	Altoona, PA Blair County, PA	0.8462	0.9385	0.9077	0.8770
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9178	0.9671	0.9507	0.9342
11180	Ames, IA Story County, IA	0.9479	0.9792	0.9687	0.9583
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.2165	1.0866	1.1299	1.1732
11300	Anderson, IN Madison County, IN	0.8713	0.9485	0.9228	0.8970
11340	Anderson, SC Anderson County, SC	0.8670	0.9468	0.9202	0.8936
11460	Ann Arbor, MI Washtenaw County, MI	1.1022	1.0409	1.0613	1.0818
11500	Anniston-Oxford, AL Calhoun County, AL	0.7881	0.9152	0.8729	0.8305
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9131	0.9652	0.9479	0.9305
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9191	0.9676	0.9515	0.9353
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	1.0202	1.0081	1.0121	1.0162

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9971	0.9988	0.9983	0.9977
12100	Atlantic City, NJ Atlantic County, NJ	1.0931	1.0372	1.0559	1.0745
12220	Auburn-Opelika, AL Lee County, AL	0.8215	0.9286	0.8929	0.8572
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9154	0.9662	0.9492	0.9323

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5 THS Wage Index[3]	3/5 THS Wage Index[4]	4/5 THS Wage Index[5]
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9595	0.9838	0.9757	0.9676
12540	Bakersfield, CA Kern County, CA	1.0036	1.0014	1.0022	1.0029
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	0.9907	0.9963	0.9944	0.9926
12620	Bangor, ME Penobscot County, ME	0.9955	0.9982	0.9973	0.9964
12700	Barnstable Town, MA Barnstable County, MA	1.2335	1.0934	1.1401	1.1868
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8319	0.9328	0.8991	0.8655
12980	Battle Creek, MI Calhoun County, MI	0.9366	0.9746	0.9620	0.9493
13020	Bay City, MI Bay County, MI	0.9574	0.9830	0.9744	0.9659
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8616	0.9446	0.9170	0.8893
13380	Bellingham, WA Whatcom County, WA	1.1642	1.0657	1.0985	1.1314
13460	Bend, OR Deschutes County, OR	1.0603	1.0241	1.0362	1.0482

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0956	1.0382	1.0574	1.0765
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8961	0.9584	0.9377	0.9169
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8447	0.9379	0.9068	0.8758
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.9157	0.9663	0.9494	0.9326
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7505	0.9002	0.8503	0.8004
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.7951	0.9180	0.8771	0.8361
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8587	0.9435	0.9152	0.8870
14060	Bloomington-Normal, IL McLean County, IL	0.9111	0.9644	0.9467	0.9289
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9352	0.9741	0.9611	0.9482
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1771	1.0708	1.1063	1.1417

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
14500	Boulder, CO Boulder County, CO	1.0046	1.0018	1.0028	1.0037
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8140	0.9256	0.8884	0.8512
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0614	1.0246	1.0368	1.0491
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2835	1.1134	1.1701	1.2268
15180	Brownsville-Harlingen, TX Cameron County, TX	1.0125	1.0050	1.0075	1.0100
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	1.1933	1.0773	1.1160	1.1546
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9339	0.9736	0.9603	0.9471
15500	Burlington, NC Alamance County, NC	0.8967	0.9587	0.9380	0.9174
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9322	0.9729	0.9593	0.9458
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1189	1.0476	1.0713	1.0951
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0675	1.0270	1.0405	1.0540
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8895	0.9558	0.9337	0.9116
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9371	0.9748	0.9623	0.9497
16180	Carson City, NV Carson City, NV	1.0352	1.0141	1.0211	1.0282
16220	Casper, WY Natrona County, WY	0.9243	0.9697	0.9546	0.9394
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8975	0.9590	0.9385	0.9180

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9527	0.9811	0.9716	0.9622
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8876	0.9550	0.9326	0.9101
16700	Charleston-North Charleston, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9420	0.9768	0.9652	0.9536
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9743	0.9897	0.9846	0.9794
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	1.0294	1.0118	1.0176	1.0235
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.9207	0.9683	0.9524	0.9366
16940	Cheyenne, WY Laramie County, WY	0.8980	0.9592	0.9388	0.9184

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0868	1.0347	1.0521	1.0694
17020	Chico, CA Butte County, CA	1.0542	1.0217	1.0325	1.0434
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9516	0.9806	0.9710	0.9613
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8022	0.9209	0.8813	0.8418
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.7844	0.9138	0.8706	0.8275
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9650	0.9860	0.9790	0.9720
17660	Coeur d'Alene, ID Kootenai County, ID	0.9339	0.9736	0.9603	0.9471

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9243	0.9697	0.9546	0.9394
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9792	0.9917	0.9875	0.9834
17860	Columbia, MO Boone County, MO Howard County, MO	0.8396	0.9358	0.9038	0.8717
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.9392	0.9757	0.9635	0.9514
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8690	0.9476	0.9214	0.8952
18020	Columbus, IN Bartholomew County, IN	0.9388	0.9755	0.9633	0.9510
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	0.9737	0.9895	0.9842	0.9790
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8647	0.9459	0.9188	0.8918
18700	Corvallis, OR Benton County, OR	1.0545	1.0218	1.0327	1.0436
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8662	0.9465	0.9197	0.8930

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	1.0074	1.0030	1.0044	1.0059
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.9558	0.9823	0.9735	0.9646
19180	Danville, IL Vermilion County, IL	0.8392	0.9357	0.9035	0.8714
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8643	0.9457	0.9186	0.8914
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8773	0.9509	0.9264	0.9018
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9303	0.9721	0.9582	0.9442
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.8894	0.9558	0.9336	0.9115
19500	Decatur, IL Macon County, IL	0.8122	0.9249	0.8873	0.8498
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8898	0.9559	0.9339	0.9118

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
19740	Denver-Aurora, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0904	1.0362	1.0542	1.0723
19780	Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9266	0.9706	0.9560	0.9413
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	1.0349	1.0140	1.0209	1.0279
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7537	0.9015	0.8522	0.8030
20100	Dover, DE Kent County, DE	0.9825	0.9930	0.9895	0.9860
20220	Dubuque, IA Dubuque County, IA	0.8748	0.9499	0.9249	0.8998
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0340	1.0136	1.0204	1.0272
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	1.0363	1.0145	1.0218	1.0290
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9139	0.9656	0.9483	0.9311
20764	Edison, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1136	1.0454	1.0682	1.0909

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
20940	El Centro, CA Imperial County, CA	0.8856	0.9542	0.9314	0.9085
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8684	0.9474	0.9210	0.8947
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9278	0.9711	0.9567	0.9422
21300	Elmira, NY Chemung County, NY	0.8445	0.9378	0.9067	0.8756
21340	El Paso, TX El Paso County, TX	0.9181	0.9672	0.9509	0.9345
21420	Enid, OK Garfield County, OK	0.9001	0.9600	0.9401	0.9201
21500	Erie, PA Erie County, PA	0.8699	0.9480	0.9219	0.8959
21604	Essex County, MA Essex County, MA	1.0662	1.0265	1.0397	1.0530
21660	Eugene-Springfield, OR Lane County, OR	1.0940	1.0376	1.0564	1.0752
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8372	0.9349	0.9023	0.8698
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1146	1.0458	1.0688	1.0917
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.3939	0.7576	0.6363	0.5151
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.9114	0.9646	0.9468	0.9291
22140	Farmington, NM San Juan County, NM	0.8049	0.9220	0.8829	0.8439
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9363	0.9745	0.9618	0.9490

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8636	0.9454	0.9182	0.8909
22380	Flagstaff, AZ Coconino County, AZ	1.0787	1.0315	1.0472	1.0630
22420	Flint, MI Genesee County, MI	1.1178	1.0471	1.0707	1.0942
22500	Florence, SC Darlington County, SC Florence County, SC	0.8833	0.9533	0.9300	0.9066
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7883	0.9153	0.8730	0.8306
22540	Fond du Lac, WI Fond du Lac County, WI	0.9897	0.9959	0.9938	0.9918
22660	Fort Collins-Loveland, CO Larimer County, CO	1.0218	1.0087	1.0131	1.0174
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0165	1.0066	1.0099	1.0132
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.8283	0.9313	0.8970	0.8626
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8786	0.9514	0.9272	0.9029
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9807	0.9923	0.9884	0.9846
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9472	0.9789	0.9683	0.9578
23420	Fresno, CA Fresno County, CA	1.0536	1.0214	1.0322	1.0429

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
23460	Gadsden, AL Etowah County, AL	0.8049	0.9220	0.8829	0.8439
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9459	0.9784	0.9675	0.9567
23580	Gainesville, GA Hall County, GA	0.9557	0.9823	0.9734	0.9646
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9310	0.9724	0.9586	0.9448
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8467	0.9387	0.9080	0.8774
24140	Goldsboro, NC Wayne County, NC	0.8778	0.9511	0.9267	0.9022
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.9091	0.9636	0.9455	0.9273
24300	Grand Junction, CO Mesa County, CO	0.9900	0.9960	0.9940	0.9920
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9420	0.9768	0.9652	0.9536
24500	Great Falls, MT Cascade County, MT	0.8810	0.9524	0.9286	0.9048
24540	Greeley, CO Weld County, CO	0.9444	0.9778	0.9666	0.9555
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9590	0.9836	0.9754	0.9672
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9190	0.9676	0.9514	0.9352
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9183	0.9673	0.9510	0.9346

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
24860	Greenville, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9557	0.9823	0.9734	0.9646
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.4005	0.7602	0.6403	0.5204
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8950	0.9580	0.9370	0.9160
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9715	0.9886	0.9829	0.9772
25260	Hanford-Corcoran, CA Kings County, CA	0.9296	0.9718	0.9578	0.9437
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9359	0.9744	0.9615	0.9487
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9275	0.9710	0.9565	0.9420
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Litchfield County, CT Middlesex County, CT Tolland County, CT	1.1054	1.0422	1.0632	1.0843
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7362	0.8945	0.8417	0.7890
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9502	0.9801	0.9701	0.9602
25980	Hinesville-Fort Stewart, GA Liberty County, GA Long County, GA	0.7715	0.9086	0.8629	0.8172

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
26100	Holland-Grand Haven, MI				
	Ottawa County, MI	0.9388	0.9755	0.9633	0.9510
26180	Honolulu, HI				
	Honolulu County, HI	1.1013	1.0405	1.0608	1.0810
26300	Hot Springs, AR				
	Garland County, AR	0.9249	0.9700	0.9549	0.9399
26380	Houma-Bayou Cane-Thibodaux, LA				
	Lafourche Parish, LA				
	Terrebonne Parish, LA	0.7721	0.9088	0.8633	0.8177
26420	Houston-Baytown-Sugar Land, TX				
	Austin County, TX				
	Brazoria County, TX				
	Chambers County, TX				
	Fort Bend County, TX				
	Galveston County, TX				
	Harris County, TX				
	Liberty County, TX				
	Montgomery County, TX				
	San Jacinto County, TX				
	Waller County, TX	0.9973	0.9989	0.9984	0.9978
26580	Huntington-Ashland, WV-KY-OH				
	Boyd County, KY				
	Greenup County, KY				
	Lawrence County, OH				
	Cabell County, WV				
	Wayne County, WV	0.9564	0.9826	0.9738	0.9651
26620	Huntsville, AL				
	Limestone County, AL				
	Madison County, AL	0.8851	0.9540	0.9311	0.9081
26820	Idaho Falls, ID				
	Bonneville County, ID				
	Jefferson County, ID	0.9059	0.9624	0.9435	0.9247
26900	Indianapolis, IN				
	Boone County, IN				
	Brown County, IN				
	Hamilton County, IN				
	Hancock County, IN				
	Hendricks County, IN				
	Johnson County, IN				
	Marion County, IN				
	Morgan County, IN				
	Putnam County, IN				
	Shelby County, IN	1.0113	1.0045	1.0068	1.0090

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9654	0.9862	0.9792	0.9723
27060	Ithaca, NY Tompkins County, NY	0.9589	0.9836	0.9753	0.9671
27100	Jackson, MI Jackson County, MI	0.9146	0.9658	0.9488	0.9317
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8291	0.9316	0.8975	0.8633
27180	Jackson, TN Chester County, TN Madison County, TN	0.8900	0.9560	0.9340	0.9120
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9537	0.9815	0.9722	0.9630
27340	Jacksonville, NC Onslow County, NC	0.8401	0.9360	0.9041	0.8721
27460	Jamestown, NY Chautauqua County, NY	0.7589	0.9036	0.8553	0.8071
27500	Janesville, WI Rock County, WI	0.9583	0.9833	0.9750	0.9666
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8338	0.9335	0.9003	0.8670
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.8146	0.9258	0.8888	0.8517
27780	Johnstown, PA Cambria County, PA	0.8380	0.9352	0.9028	0.8704
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.8144	0.9258	0.8886	0.8515

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8721	0.9488	0.9233	0.8977
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0676	1.0270	1.0406	1.0541
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0603	1.0241	1.0362	1.0482
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9629	0.9852	0.9777	0.9703
28420	Kennewick-Richland-Pasco, WA Benton County, WA Franklin County, WA	1.0520	1.0208	1.0312	1.0416
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.9242	0.9697	0.9545	0.9394
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.8240	0.9296	0.8944	0.8592
28740	Kingston, NY Ulster County, NY	0.9000	0.9600	0.9400	0.9200

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8548	0.9419	0.9129	0.8838
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.8986	0.9594	0.9392	0.9189
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9289	0.9716	0.9573	0.9431
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9067	0.9627	0.9440	0.9254
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8306	0.9322	0.8984	0.8645
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7935	0.9174	0.8761	0.8348
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0342	1.0137	1.0205	1.0274
29460	Lakeland, FL Polk County, FL	0.8930	0.9572	0.9358	0.9144
29540	Lancaster, PA Lancaster County, PA	0.9883	0.9953	0.9930	0.9906
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	0.9658	0.9863	0.9795	0.9726
29700	Laredo, TX Webb County, TX	0.8747	0.9499	0.9248	0.8998
29740	Las Cruces, NM Dona Ana County, NM	0.8784	0.9514	0.9270	0.9027
29820	Las Vegas-Paradise, NV Clark County, NV	1.1378	1.0551	1.0827	1.1102
29940	Lawrence, KS Douglas County, KS	0.8644	0.9458	0.9186	0.8915
30020	Lawton, OK Comanche County, OK	0.8212	0.9285	0.8927	0.8570

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
30140	Lebanon, PA Lebanon County, PA	0.8570	0.9428	0.9142	0.8856
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9314	0.9726	0.9588	0.9451
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9562	0.9825	0.9737	0.9650
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9359	0.9744	0.9615	0.9487
30620	Lima, OH Allen County, OH	0.9330	0.9732	0.9598	0.9464
30700	Lincoln, NE Lancaster County, NE Seward County, NE	1.0208	1.0083	1.0125	1.0166
30780	Little Rock-North Little Rock, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8826	0.9530	0.9296	0.9061
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9094	0.9638	0.9456	0.9275
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8801	0.9520	0.9281	0.9041
31020	Longview, WA Cowlitz County, WA	1.0224	1.0090	1.0134	1.0179
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.1732	1.0693	1.1039	1.1386

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
31140	Louisville, KY-IN				
	Clark County, IN				
	Floyd County, IN				
	Harrison County, IN				
	Washington County, IN				
	Bullitt County, KY				
	Henry County, KY				
	Jefferson County, KY				
	Meade County, KY				
	Nelson County, KY				
	Oldham County, KY				
	Shelby County, KY				
	Spencer County, KY				
	Trimble County, KY	0.9122	0.9649	0.9473	0.9298
31180	Lubbock, TX				
	Crosby County, TX				
	Lubbock County, TX	0.8777	0.9511	0.9266	0.9022
31340	Lynchburg, VA				
	Amherst County, VA				
	Appomattox County, VA				
	Bedford County, VA				
	Campbell County, VA				
	Bedford City, VA				
	Lynchburg City, VA	0.9017	0.9607	0.9410	0.9214
31420	Macon, GA				
	Bibb County, GA				
	Crawford County, GA				
	Jones County, GA				
	Monroe County, GA				
	Twiggs County, GA	0.9887	0.9955	0.9932	0.9910
31460	Madera, CA				
	Madera County, CA	0.8521	0.9408	0.9113	0.8817
31540	Madison, WI				
	Columbia County, WI				
	Dane County, WI				
	Iowa County, WI	1.0306	1.0122	1.0184	1.0245
31700	Manchester-Nashua, NH				
	Hillsborough County, NH				
	Merrimack County, NH	1.0642	1.0257	1.0385	1.0514
31900	Mansfield, OH				
	Richland County, OH	0.9189	0.9676	0.9513	0.9351
32420	Mayagüez, PR				
	Hormigueros Municipio, PR				
	Mayagüez Municipio, PR	0.4493	0.7797	0.6696	0.5594

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5 THS Wage Index[3]	3/5 THS Wage Index[4]	4/5 THS Wage Index[5]
32580	McAllen-Edinburg-Pharr, TX				
	Hidalgo County, TX	0.8602	0.9441	0.9161	0.8882
32780	Medford, OR				
	Jackson County, OR	1.0534	1.0214	1.0320	1.0427
32820	Memphis, TN-MS-AR				
	Crittenden County, AR				
	DeSoto County, MS				
	Marshall County, MS				
	Tate County, MS				
	Tunica County, MS				
	Fayette County, TN				
	Shelby County, TN				
	Tipton County, TN	0.9217	0.9687	0.9530	0.9374
32900	Merced, CA				
	Merced County, CA	1.0575	1.0230	1.0345	1.0460
33124	Miami-Miami Beach-Kendall, FL				
	Miami-Dade County, FL	0.9870	0.9948	0.9922	0.9896
33140	Michigan City-La Porte, IN				
	LaPorte County, IN	0.9332	0.9733	0.9599	0.9466
33260	Midland, TX				
	Midland County, TX	0.9384	0.9754	0.9630	0.9507
33340	Milwaukee-Waukesha-West Allis, WI				
	Milwaukee County, WI				
	Ozaukee County, WI				
	Washington County, WI				
	Waukesha County, WI	1.0076	1.0030	1.0046	1.0061
33460	Minneapolis-St. Paul-Bloomington, MN-WI				
	Anoka County, MN				
	Carver County, MN				
	Chisago County, MN				
	Dakota County, MN				
	Hennepin County, MN				
	Isanti County, MN				
	Ramsey County, MN				
	Scott County, MN				
	Sherburne County, MN				
	Washington County, MN				
	Wright County, MN				
	Pierce County, WI				
	St. Croix County, WI	1.1066	1.0426	1.0640	1.0853
33540	Missoula, MT				
	Missoula County, MT	0.9618	0.9847	0.9771	0.9694

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
33660	Mobile, AL Mobile County, AL	0.7995	0.9198	0.8797	0.8396
33700	Modesto, CA Stanislaus County, CA	1.1966	1.0786	1.1180	1.1573
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7903	0.9161	0.8742	0.8322
33780	Monroe, MI Monroe County, MI	0.9506	0.9802	0.9704	0.9605
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8300	0.9320	0.8980	0.8640
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8730	0.9492	0.9238	0.8984
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7790	0.9116	0.8674	0.8232
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0576	1.0230	1.0346	1.0461
34620	Muncie, IN Delaware County, IN	0.8580	0.9432	0.9148	0.8864
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9741	0.9896	0.9845	0.9793
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC	0.9022	0.9609	0.9413	0.9218
34900	Napa, CA Napa County, CA	1.2531	1.1012	1.1519	1.2025
34940	Naples-Marco Island, FL Collier County, FL	1.0558	1.0223	1.0335	1.0446

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
34980	Nashville-Davidson--Murfreesboro, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	1.0086	1.0034	1.0052	1.0069
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2907	1.1163	1.1744	1.2326
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1687	1.0675	1.1012	1.1350
35300	New Haven-Milford, CT New Haven County, CT	1.1807	1.0723	1.1084	1.1446
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.9103	0.9641	0.9462	0.9282

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
35644	New York-Wayne-White Plains, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3311	1.1324	1.1987	1.2649
35660	Niles-Benton Harbor, MI Berrien County, MI	0.8847	0.9539	0.9308	0.9078
35980	Norwich-New London, CT New London County, CT	1.1596	1.0638	1.0958	1.1277
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.5220	1.2088	1.3132	1.4176
36100	Ocala, FL Marion County, FL	0.9153	0.9661	0.9492	0.9322
36140	Ocean City, NJ Cape May County, NJ	1.0810	1.0324	1.0486	1.0648
36220	Odessa, TX Ector County, TX	0.9798	0.9919	0.9879	0.9838
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9216	0.9686	0.9530	0.9373
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8982	0.9593	0.9389	0.9186
36500	Olympia, WA Thurston County, WA	1.1006	1.0402	1.0604	1.0805

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9754	0.9902	0.9852	0.9803
36740	Orlando, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9742	0.9897	0.9845	0.9794
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9099	0.9640	0.9459	0.9279
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8434	0.9374	0.9060	0.8747
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1105	1.0442	1.0663	1.0884
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9633	0.9853	0.9780	0.9706
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8124	0.9250	0.8874	0.8499
37620	Parkersburg-Marietta, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8288	0.9315	0.8973	0.8630
37700	Pascagoula, MS George County, MS Jackson County, MS	0.7974	0.9190	0.8784	0.8379
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8306	0.9322	0.8984	0.8645
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.8886	0.9554	0.9332	0.9109

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0865	1.0346	1.0519	1.0692
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	0.9982	0.9993	0.9989	0.9986
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.8673	0.9469	0.9204	0.8938
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8736	0.9494	0.9242	0.8989
38340	Pittsfield, MA Berkshire County, MA	1.0439	1.0176	1.0263	1.0351
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9601	0.9840	0.9761	0.9681
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.5006	0.8002	0.7004	0.6005
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0112	1.0045	1.0067	1.0090
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1403	1.0561	1.0842	1.1122

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5 THS Wage Index[3]	3/5 THS Wage Index[4]	4/5 THS Wage Index[5]
38940	Port St. Lucie-Fort Pierce, FL Martin County, FL St. Lucie County, FL	1.0046	1.0018	1.0028	1.0037
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.1363	1.0545	1.0818	1.1090
39140	Prescott, AZ Yavapai County, AZ	0.9892	0.9957	0.9935	0.9914
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0929	1.0372	1.0557	1.0743
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9588	0.9835	0.9753	0.9670
39380	Pueblo, CO Pueblo County, CO	0.8752	0.9501	0.9251	0.9002
39460	Punta Gorda, FL Charlotte County, FL	0.9441	0.9776	0.9665	0.9553
39540	Racine, WI Racine County, WI	0.9045	0.9618	0.9427	0.9236
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	1.0057	1.0023	1.0034	1.0046
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.8912	0.9565	0.9347	0.9130
39740	Reading, PA Berks County, PA	0.9215	0.9686	0.9529	0.9372
39820	Redding, CA Shasta County, CA	1.1835	1.0734	1.1101	1.1468
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0456	1.0182	1.0274	1.0365

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9397	0.9759	0.9638	0.9518
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.0970	1.0388	1.0582	1.0776
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8415	0.9366	0.9049	0.8732
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1504	1.0602	1.0902	1.1203
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.9281	0.9712	0.9569	0.9425

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9626	0.9850	0.9776	0.9701
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0221	1.0088	1.0133	1.0177
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.8998	0.9599	0.9399	0.9198
40660	Rome, GA Floyd County, GA	0.8878	0.9551	0.9327	0.9102
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.1700	1.0680	1.1020	1.1360
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.9814	0.9926	0.9888	0.9851
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0215	1.0086	1.0129	1.0172
41100	St. George, UT Washington County, UT	0.9458	0.9783	0.9675	0.9566
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0013	1.0005	1.0008	1.0010

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
41180	St. Louis, MO-IL				
	Bond County, IL				
	Calhoun County, IL				
	Clinton County, IL				
	Jersey County, IL				
	Macoupin County, IL				
	Madison County, IL				
	Monroe County, IL				
	St. Clair County, IL				
	Crawford County, MO				
	Franklin County, MO				
	Jefferson County, MO				
	Lincoln County, MO				
	St. Charles County, MO				
	St. Louis County, MO				
	Warren County, MO				
	Washington County, MO				
	St. Louis City, MO	0.9076	0.9630	0.9446	0.9261
41420	Salem, OR				
	Marion County, OR				
	Polk County, OR	1.0556	1.0222	1.0334	1.0445
41500	Salinas, CA				
	Monterey County, CA	1.3823	1.1529	1.2294	1.3058
41540	Salisbury, MD				
	Somerset County, MD				
	Wicomico County, MD	0.9123	0.9649	0.9474	0.9298
41620	Salt Lake City, UT				
	Salt Lake County, UT				
	Summit County, UT				
	Tooele County, UT	0.9561	0.9824	0.9737	0.9649
41660	San Angelo, TX				
	Irion County, TX				
	Tom Green County, TX	0.8167	0.9267	0.8900	0.8534
41700	San Antonio, TX				
	Atascosa County, TX				
	Bandera County, TX				
	Bexar County, TX				
	Comal County, TX				
	Guadalupe County, TX				
	Kendall County, TX				
	Medina County, TX				
	Wilson County, TX	0.9003	0.9601	0.9402	0.9202
41740	San Diego-Carlsbad-San Marcos, CA				
	San Diego County, CA	1.1267	1.0507	1.0760	1.1014

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
41780	Sandusky, OH Erie County, OH	0.9017	0.9607	0.9410	0.9214
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.4712	1.1885	1.2827	1.3770
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.5240	0.8096	0.7144	0.6192
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.4722	1.1889	1.2833	1.3778

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
41980					
	San Juan-Caguas-Guaynabo, PR				
	Aguas Buenas Municipio, PR				
	Aibonito Municipio, PR				
	Arecibo Municipio, PR				
	Barceloneta Municipio, PR				
	Barranquitas Municipio, PR				
	Bayamón Municipio, PR				
	Caguas Municipio, PR				
	Camuy Municipio, PR				
	Canóvanas Municipio, PR				
	Carolina Municipio, PR				
	Cataño Municipio, PR				
	Cayey Municipio, PR				
	Ciales Municipio, PR				
	Cidra Municipio, PR				
	Comerío Municipio, PR				
	Corozal Municipio, PR				
	Dorado Municipio, PR				
	Florida Municipio, PR				
	Guaynabo Municipio, PR				
	Gurabo Municipio, PR				
	Hatillo Municipio, PR				
	Humacao Municipio, PR				
	Juncos Municipio, PR				
	Las Piedras Municipio, PR				
	Loíza Municipio, PR				
	Manatí Municipio, PR				
	Maunabo Municipio, PR				
	Morovis Municipio, PR				
	Naguabo Municipio, PR				
	Naranjito Municipio, PR				
	Orocovis Municipio, PR				
	Quebradillas Municipio, PR				
	Río Grande Municipio, PR				
	San Juan Municipio, PR				
	San Lorenzo Municipio, PR				
	Toa Alta Municipio, PR				
	Toa Baja Municipio, PR				
	Trujillo Alto Municipio, PR				
	Vega Alta Municipio, PR				
	Vega Baja Municipio, PR				
	Yabucoa Municipio, PR	0.4645	0.7858	0.6787	0.5716

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.1118	1.0447	1.0671	1.0894
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1611	1.0644	1.0967	1.1289
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.0771	1.0308	1.0463	1.0617
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.4779	1.1912	1.2867	1.3823
42140	Santa Fe, NM Santa Fe County, NM	1.0909	1.0364	1.0545	1.0727
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.2961	1.1184	1.1777	1.2369
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9629	0.9852	0.9777	0.9703
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9460	0.9784	0.9676	0.9568
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8543	0.9417	0.9126	0.8834
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1492	1.0597	1.0895	1.1194
43100	Sheboygan, WI Sheboygan County, WI	0.8948	0.9579	0.9369	0.9158
43300	Sherman-Denison, TX Grayson County, TX	0.9617	0.9847	0.9770	0.9694
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.9132	0.9653	0.9479	0.9306
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9070	0.9628	0.9442	0.9256

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9441	0.9776	0.9665	0.9553
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9447	0.9779	0.9668	0.9558
43900	Spartanburg, SC Spartanburg County, SC	0.9519	0.9808	0.9711	0.9615
44060	Spokane, WA Spokane County, WA	1.0660	1.0264	1.0396	1.0528
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8738	0.9495	0.9243	0.8990
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0176	1.0070	1.0106	1.0141
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8557	0.9423	0.9134	0.8846
44220	Springfield, OH Clark County, OH	0.8748	0.9499	0.9249	0.8998
44300	State College, PA Centre County, PA	0.8461	0.9384	0.9077	0.8769
44700	Stockton, CA San Joaquin County, CA	1.0564	1.0226	1.0338	1.0451
44940	Sumter, SC Sumter County, SC	0.8520	0.9408	0.9112	0.8816
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9468	0.9787	0.9681	0.9574
45104	Tacoma, WA Pierce County, WA	1.1078	1.0431	1.0647	1.0862
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8655	0.9462	0.9193	0.8924

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9024	0.9610	0.9414	0.9219
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8517	0.9407	0.9110	0.8814
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8413	0.9365	0.9048	0.8730
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9524	0.9810	0.9714	0.9619
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8904	0.9562	0.9342	0.9123
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0276	1.0110	1.0166	1.0221
46060	Tucson, AZ Pima County, AZ	0.8926	0.9570	0.9356	0.9141
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8690	0.9476	0.9214	0.8952
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8336	0.9334	0.9002	0.8669
46340	Tyler, TX Smith County, TX	0.9502	0.9801	0.9701	0.9602

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8295	0.9318	0.8977	0.8636
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8341	0.9336	0.9005	0.8673
46700	Vallejo-Fairfield, CA Solano County, CA	1.4279	1.1712	1.2567	1.3423
46940	Vero Beach, FL Indian River County, FL	0.9477	0.9791	0.9686	0.9582
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8470	0.9388	0.9082	0.8776
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0573	1.0229	1.0344	1.0458
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8894	0.9558	0.9336	0.9115
47300	Visalia-Porterville, CA Tulare County, CA	0.9975	0.9990	0.9985	0.9980
47380	Waco, TX McLennan County, TX	0.8146	0.9258	0.8888	0.8517
47580	Warner Robins, GA Houston County, GA	0.8489	0.9396	0.9093	0.8791

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
47644	Warren-Farmington Hills-Troy, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0112	1.0045	1.0067	1.0090
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.1023	1.0409	1.0614	1.0818
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8633	0.9453	0.9180	0.8906
48140	Wausau, WI Marathon County, WI	0.9570	0.9828	0.9742	0.9656
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.8280	0.9312	0.8968	0.8624
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	0.9427	0.9771	0.9656	0.9542
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	1.0362	1.0145	1.0217	1.0290

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.7449	0.8980	0.8469	0.7959
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9457	0.9783	0.9674	0.9566
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.8332	0.9333	0.8999	0.8666
48700	Williamsport, PA Lycoming County, PA	0.8485	0.9394	0.9091	0.8788
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.1049	1.0420	1.0629	1.0839
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9237	0.9695	0.9542	0.9390
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	1.0496	1.0198	1.0298	1.0397
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9401	0.9760	0.9641	0.9521
49340	Worcester, MA Worcester County, MA	1.0996	1.0398	1.0598	1.0797
49420	Yakima, WA Yakima County, WA	1.0322	1.0129	1.0193	1.0258
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.4493	0.7797	0.6696	0.5594
49620	York-Hanover, PA York County, PA	0.9150	0.9660	0.9490	0.9320

CBSA Code	Urban Area (Constituent Counties)	Full Wage Index[2]	2/5[THS] Wage Index[3]	3/5[THS] Wage Index[4]	4/5[THS] Wage Index[5]
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.9237	0.9695	0.9542	0.9390
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.0363	1.0145	1.0218	1.0290
49740	Yuma, AZ Yuma County, AZ	0.8871	0.9548	0.9323	0.9097

1 As discussed in section IV.C.1.d. of the preamble of this proposed rule, because there are no longer any LTCHs in their cost reporting period that began during FY 2003 (the first year of the 5-year wage index phase-in), we are no longer showing the $1/5^{th}$ wage index value. For further details on the 5-year phase-in of the wage index, see section IV.C.1.of this proposed rule.

2 Wage index calculated using the same wage data used to compute the wage index used by acute care hospitals under the IPPS for Federal FY 2005 (that is, fiscal year 2001 audited acute care hospital inpatient wage data) without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act.

3 Two-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2003 through September 30, 2004 (Federal FY 2004). That is, for a LTCH's cost reporting period that begins during Federal FY 2004 and located in Chicago, Illinois (CBSA 16974), the proposed $2/5^{ths}$ wage index value is computed as ((2*1.0868) + 3))/5 = 1.0347. For further details on the 5-year phase-in of the wage index, see section IV.C.1. of this proposed rule.

4 Three-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2005 through September 30, 2006 (Federal FY 2005). That is, for a LTCH's cost reporting period that begins during Federal FY 2005 and located in Chicago, Illinois (CBSA 16974), the proposed $3/5^{ths}$ wage index value is computed as ((3*1.0868) + 2))/5 = 1.0521. For further details on the 5-year phase-in of the wage index, see section IV.C.1. of this proposed rule.

5 Four-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2006 through September 30, 2007 (Federal FY 2006). That is, for a LTCH's cost reporting period that begins during Federal FY 2006 and located in Chicago, Illinois (CBSA 16974), the proposed $4/5^{ths}$ wage index value is computed as ((4*1.0868) + 1))/5 = 1.0694. For further details on the 5-year phase-in of the wage index, see section IV.C.1. of this proposed rule.

Table 2.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX (BASED ON PROPOSED CBSA LABOR MARKET AREAS) FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2005 THROUGH JUNE 30, 2006[1]

CBSA Code	Nonurban Area	Full Wage Index[2]	2/5ths Wage Index[3]	3/5ths Wage Index[4]	4/5ths Wage Index[5]
01	Alabama	0.7628	0.9051	0.8577	0.8102
02	Alaska	1.1746	1.0698	1.1048	1.1397
03	Arizona	0.8936	0.9574	0.9362	0.9149
04	Arkansas	0.7406	0.8962	0.8444	0.7925
05	California	1.0524	1.0210	1.0314	1.0419
06	Colorado	0.9368	0.9747	0.9621	0.9494
07	Connecticut	1.1917	1.0767	1.1150	1.1534
08	Delaware	0.9503	0.9801	0.9702	0.9602
10	Florida	0.8574	0.9430	0.9144	0.8859
11	Georgia	0.7733	0.9093	0.8640	0.8186
12	Hawaii	1.0522	1.0209	1.0313	1.0418
13	Idaho	0.8227	0.9291	0.8936	0.8582
14	Illinois	0.8339	0.9336	0.9003	0.8671
15	Indiana	0.8653	0.9461	0.9192	0.8922
16	Iowa	0.8475	0.9390	0.9085	0.8780
17	Kansas	0.8079	0.9232	0.8847	0.8463
18	Kentucky	0.7755	0.9102	0.8653	0.8204
19	Louisiana	0.7345	0.8938	0.8407	0.7876
20	Maine	0.9039	0.9616	0.9423	0.9231
21	Maryland	0.9220	0.9688	0.9532	0.9376
22	Massachusetts[6]	------	------	------	------
23	Michigan	0.8786	0.9514	0.9272	0.9029
24	Minnesota	0.9330	0.9732	0.9598	0.9464
25	Mississippi	0.7635	0.9054	0.8581	0.8108
26	Missouri	0.7762	0.9105	0.8657	0.8210
27	Montana	0.8701	0.9480	0.9221	0.8961

CBSA Code	Nonurban Area	Full Wage Index[2]	2/5ths Wage Index[3]	3/5ths Wage Index[4]	4/5ths Wage Index[5]
28	Nebraska	0.9035	0.9614	0.9421	0.9228
29	Nevada	0.9280	0.9712	0.9568	0.9424
30	New Hampshire	0.9940	0.9976	0.9964	0.9952
31	New Jersey[6]	------	------	------	------
32	New Mexico	0.8680	0.9472	0.9208	0.8944
33	New York	0.8151	0.9260	0.8891	0.8521
34	North Carolina	0.8563	0.9425	0.9138	0.8850
35	North Dakota	0.7743	0.9097	0.8646	0.8194
36	Ohio	0.8693	0.9477	0.9216	0.8954
37	Oklahoma	0.7686	0.9074	0.8612	0.8149
38	Oregon	0.9914	0.9966	0.9948	0.9931
39	Pennsylvania	0.8310	0.9324	0.8986	0.8648
40	Puerto Rico[6]	------	------	------	------
41	Rhode Island[6]	------	------	------	------
42	South Carolina	0.8683	0.9473	0.9210	0.8946
43	South Dakota	0.8398	0.9359	0.9039	0.8718
44	Tennessee	0.7869	0.9148	0.8721	0.8295
45	Texas	0.7966	0.9186	0.8780	0.8373
46	Utah	0.8287	0.9315	0.8972	0.8630
47	Vermont	0.9375	0.9750	0.9625	0.9500
49	Virginia	0.8049	0.9220	0.8829	0.8439
50	Washington	1.0312	1.0125	1.0187	1.0250
51	West Virginia	0.7865	0.9146	0.8719	0.8292
52	Wisconsin	0.9492	0.9797	0.9695	0.9594
53	Wyoming	0.9182	0.9673	0.9509	0.9346

1 As discussed in section IV.C.1.d. of the preamble of this proposed rule, because there are no longer any LTCHs in their cost reporting period that began during FY 2003 (the first year of the 5-year wage index phase-in), we are no longer showing the $1/5^{th}$ wage index value. For further details on the 5-year phase-in of the wage index, see section IV.C.1.of this proposed rule.

2 Wage index calculated using the same wage data used to compute the wage index used by acute care hospitals under the IPPS for Federal FY 2005 (that is, fiscal year 2001 audited acute care hospital inpatient wage data) without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act.

3 Two-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2003 through September 30, 2004 (Federal FY 2004). That is, for a LTCH's cost reporting period that begins during Federal FY 2004 and located in rural Illinois, the proposed $2/5^{ths}$ wage index value is computed as ((2*0.8339) + 3))/5 = 0.9336. For further details on the 5-year phase-in of the wage index, see section IV.C.1. of this proposed rule.

4 Three-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2005 through September 30, 2006 (Federal FY 2005). That is, for a LTCH's cost reporting period that begins during Federal FY 2005 and located in rural Illinois, the proposed $3/5^{ths}$ wage index value is computed as ((3*0.8339) + 2))/5 = 0.9003. For further details on the 5-year phase-in of the wage index, see section IV.C.1. of this proposed rule.

5 Four-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2006 through September 30, 2007 (Federal FY 2006). That is, for a LTCH's cost reporting period that begins during Federal FY 2006 and located in rural Illinois, the proposed $4/5^{ths}$ wage index value is computed as ((3*0.8339) + 2))/5 = 0.8671. For further details on the 5-year phase-in of the wage index, see section IV.C.1. of this proposed rule.

6 All counties within the State are classified as urban.

TABLE 3.-- FY 2005 LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6THS OF THE GEOMETRIC AVERAGE LENGTH OF STAY

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
1	4 CRANIOTOMY AGE >17 W CC	1.1899	28.5	23.8
2	8 CRANIOTOMY AGE >17 W/O CC	1.1899	28.5	23.8
3	8 CRANIOTOMY AGE 0-17	1.1899	28.5	23.8
6	8 CARPAL TUNNEL RELEASE	0.6064	21.1	17.6
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.4458	36.7	30.6
8	2 PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.6064	21.1	17.6
9	SPINAL DISORDERS & INJURIES	1.0950	31.3	26.1
10	NERVOUS SYSTEM NEOPLASMS W CC	0.9022	25.0	20.8
11	1 NERVOUS SYSTEM NEOPLASMS W/O CC	0.4586	16.9	14.1
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.7416	25.6	21.3
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7820	24.6	20.5
14	INTRACRANIAL HEMORRHAGE OR STROKE W INFARCT	0.8189	25.9	21.6
15	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	0.7868	27.2	22.7
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.8358	24.7	20.6
17	2 NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.6064	21.1	17.6
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.7755	24.8	20.7
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6583	21.1	17.6
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.0558	27.0	22.5
21	4 VIRAL MENINGITIS	1.1899	28.5	23.8
22	2 HYPERTENSIVE ENCEPHALOPATHY	0.6064	21.1	17.6
23	NONTRAUMATIC STUPOR & COMA	1.1225	26.6	22.2
24	SEIZURE & HEADACHE AGE >17 W CC	0.6740	22.4	18.7
25	2 SEIZURE & HEADACHE AGE >17 W/O CC	0.6064	21.1	17.6
26	8 SEIZURE & HEADACHE AGE 0-17	0.6064	21.1	17.6
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.1418	28.3	23.6
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	0.9250	29.8	24.8
29	3 TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.8508	24.3	20.3
30	8 TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.8508	24.3	20.3
31	2 CONCUSSION AGE >17 W CC	0.6064	21.1	17.6

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
32	8 CONCUSSION AGE >17 W/O CC	0.6064	21.1	17.6
33	8 CONCUSSION AGE 0-17	0.6064	21.1	17.6
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.8418	24.2	20.2
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6976	22.6	18.8
36	8 RETINAL PROCEDURES	0.4586	16.9	14.1
37	8 ORBITAL PROCEDURES	0.4586	16.9	14.1
38	8 PRIMARY IRIS PROCEDURES	0.4586	16.9	14.1
39	8 LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.4586	16.9	14.1
40	8 EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.4586	16.9	14.1
41	8 EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4586	16.9	14.1
42	8 INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.4586	16.9	14.1
43	1 HYPHEMA	0.4586	16.9	14.1
44	3 ACUTE MAJOR EYE INFECTIONS	0.8508	24.3	20.3
45	1 NEUROLOGICAL EYE DISORDERS	0.4586	16.9	14.1
46	2 OTHER DISORDERS OF THE EYE AGE >17 W CC	0.6064	21.1	17.6
47	1 OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4586	16.9	14.1
48	8 OTHER DISORDERS OF THE EYE AGE 0-17	0.4586	16.9	14.1
49	8 MAJOR HEAD & NECK PROCEDURES	1.1899	28.5	23.8
50	8 SIALOADENECTOMY	1.1899	28.5	23.8
51	8 SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1.1899	28.5	23.8
52	8 CLEFT LIP & PALATE REPAIR	1.1899	28.5	23.8
53	8 SINUS & MASTOID PROCEDURES AGE >17	1.1899	28.5	23.8

LTC-DRG	Description	Relative Weight	Geo-metric Average Length of Stay	5/6ths of the Geo-metric Average Length of Stay
54	8 SINUS & MASTOID PROCEDURES AGE 0-17	1.1899	28.5	23.8
55	5 MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1.8658	38.6	32.2
56	8 RHINOPLASTY	1.1899	28.5	23.8
57	8 T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6064	21.1	17.6
58	8 T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.6064	21.1	17.6
59	8 TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6064	21.1	17.6
60	8 TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.6064	21.1	17.6
61	8 MYRINGOTOMY W TUBE INSERTION AGE >17	0.6064	21.1	17.6
62	8 MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.6064	21.1	17.6
63	4 OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.1899	28.5	23.8
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2588	27.4	22.8
65	DYSEQUILIBRIUM	0.3858	16.2	13.5
66	8 EPISTAXIS	0.6064	21.1	17.6
67	8 EPIGLOTTITIS	1.1899	28.5	23.8
68	OTITIS MEDIA & URI AGE >17 W CC	0.6115	21.3	17.8
69	2 OTITIS MEDIA & URI AGE >17 W/O CC	0.6064	21.1	17.6
70	8 OTITIS MEDIA & URI AGE 0-17	0.6064	21.1	17.6
71	8 LARYNGOTRACHEITIS	0.4586	16.9	14.1
72	8 NASAL TRAUMA & DEFORMITY	0.8508	24.3	20.3
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.9341	23.5	19.6
74	8 OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.6064	21.1	17.6
75	MAJOR CHEST PROCEDURES	2.0661	31.9	26.6

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3823	41.6	34.7
77	5 OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.8658	38.6	32.2
78	PULMONARY EMBOLISM	0.7424	22.0	18.3
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	0.9350	23.7	19.8
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.9215	26.7	22.3
81	8 RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	0.6064	21.1	17.6
82	RESPIRATORY NEOPLASMS	0.7591	19.9	16.6
83	2 MAJOR CHEST TRAUMA W CC	0.6064	21.1	17.6
84	1 MAJOR CHEST TRAUMA W/O CC	0.4586	16.9	14.1
85	7 PLEURAL EFFUSION W CC	0.7852	22.0	18.3
86	7 PLEURAL EFFUSION W/O CC	0.7852	22.0	18.3
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.6797	30.4	25.3
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.7334	20.1	16.8
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.7762	21.2	17.7
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7494	21.9	18.3
91	8 SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.8508	24.3	20.3
92	INTERSTITIAL LUNG DISEASE W CC	0.7318	20.4	17.0
93	1 INTERSTITIAL LUNG DISEASE W/O CC	0.4586	16.9	14.1
94	PNEUMOTHORAX W CC	0.8348	21.3	17.8
95	1 PNEUMOTHORAX W/O CC	0.4586	16.9	14.1
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.7575	20.2	16.8
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5305	16.6	13.8
98	8 BRONCHITIS & ASTHMA AGE 0-17	0.4586	16.9	14.1
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.0648	25.8	21.5
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.9048	22.9	19.1

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
101	7 OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.8737	21.9	18.3
102	7 OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.8737	21.9	18.3
103	6 HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM	0.0000	0.0	0.0
104	8 CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH	0.4586	16.9	14.1
105	8 CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH	0.4586	16.9	14.1
106	8 CORONARY BYPASS W PTCA	0.4586	16.9	14.1
107	8 CORONARY BYPASS W CARDIAC CATH	0.4586	16.9	14.1
108	4 OTHER CARDIOTHORACIC PROCEDURES	1.1899	28.5	23.8
109	2 CORONARY BYPASS W/O PTCA OR CARDIAC CATH	0.6064	21.1	17.6
110	1 MAJOR CARDIOVASCULAR PROCEDURES W CC	0.4586	16.9	14.1
111	8 MAJOR CARDIOVASCULAR PROCEDURES W/O CC	0.4586	16.9	14.1
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.3298	36.2	30.2
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.1780	33.3	27.8
115	4 PRM CARD PACEM IMPL W AMI/HR/SHOCK OR AICD LEAD OR GNRTR	1.1899	28.5	23.8
116	5 OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	1.8658	38.6	32.2
117	2 CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	0.6064	21.1	17.6
118	5 CARDIAC PACEMAKER DEVICE REPLACEMENT	1.8658	38.6	32.2
119	1 VEIN LIGATION & STRIPPING	0.4586	16.9	14.1
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.2014	32.6	27.2
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.8293	21.8	18.2

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
122	3 CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	0.8508	24.3	20.3
123	CIRCULATORY DISORDERS W AMI, EXPIRED	0.9890	18.6	15.5
124	3 CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	0.8508	24.3	20.3
125	5 CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1.8658	38.6	32.2
126	ACUTE & SUBACUTE ENDOCARDITIS	0.8439	24.6	20.5
127	HEART FAILURE & SHOCK	0.7597	21.6	18.0
128	3 DEEP VEIN THROMBOPHLEBITIS	0.8508	24.3	20.3
129	2 CARDIAC ARREST, UNEXPLAINED	0.6064	21.1	17.6
130	PERIPHERAL VASCULAR DISORDERS W CC	0.7072	22.7	18.9
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.5718	20.6	17.2
132	ATHEROSCLEROSIS W CC	0.7086	22.6	18.8
133	ATHEROSCLEROSIS W/O CC	0.5629	19.4	16.2
134	HYPERTENSION	0.6674	21.5	17.9
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.8908	24.6	20.5
136	3 CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.8508	24.3	20.3
137	8 CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8508	24.3	20.3
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7451	22.0	18.3
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.5488	19.3	16.1
140	2 ANGINA PECTORIS	0.6064	21.1	17.6
141	7 SYNCOPE & COLLAPSE W CC	0.5304	22.5	18.8
142	7 SYNCOPE & COLLAPSE W/O CC	0.5304	22.5	18.8
143	1 CHEST PAIN	0.4586	16.9	14.1
144	7 OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.7913	21.8	18.2

LTC-DRG	Description	Relative Weight	Geo-metric Average Length of Stay	5/6ths of the Geo-metric Average Length of Stay
145	7 OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7913	21.8	18.2
146	8 RECTAL RESECTION W CC	1.8658	38.6	32.2
147	8 RECTAL RESECTION W/O CC	1.8658	38.6	32.2
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	2.0460	35.1	29.3
149	1 MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	0.4586	16.9	14.1
150	5 PERITONEAL ADHESIOLYSIS W CC	1.8658	38.6	32.2
151	8 PERITONEAL ADHESIOLYSIS W/O CC	1.8658	38.6	32.2
152	5 MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.8658	38.6	32.2
153	8 MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.8658	38.6	32.2
154	5 STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	1.8658	38.6	32.2
155	8 STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.8658	38.6	32.2
156	8 STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.8658	38.6	32.2
157	4 ANAL & STOMAL PROCEDURES W CC	1.1899	28.5	23.8
158	8 ANAL & STOMAL PROCEDURES W/O CC	1.1899	28.5	23.8
159	3 HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	0.8508	24.3	20.3
160	8 HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.8508	24.3	20.3
161	5 INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.8658	38.6	32.2
162	8 INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.4586	16.9	14.1
163	8 HERNIA PROCEDURES AGE 0-17	0.4586	16.9	14.1
164	8 APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	1.8658	38.6	32.2
165	8 APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.8658	38.6	32.2

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
166	8 APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.8658	38.6	32.2
167	8 APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	1.8658	38.6	32.2
168	4 MOUTH PROCEDURES W CC	1.1899	28.5	23.8
169	8 MOUTH PROCEDURES W/O CC	0.8508	24.3	20.3
170	7 OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.7448	33.3	27.8
171	7 OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.7448	33.3	27.8
172	7 DIGESTIVE MALIGNANCY W CC	0.8822	22.8	19.0
173	7 DIGESTIVE MALIGNANCY W/O CC	0.8822	22.8	19.0
174	7 G.I. HEMORRHAGE W CC	0.7067	21.9	18.3
175	7 G.I. HEMORRHAGE W/O CC	0.7067	21.9	18.3
176	COMPLICATED PEPTIC ULCER	1.0124	23.3	19.4
177	3 UNCOMPLICATED PEPTIC ULCER W CC	0.8508	24.3	20.3
178	1 UNCOMPLICATED PEPTIC ULCER W/O CC	0.4586	16.9	14.1
179	INFLAMMATORY BOWEL DISEASE	0.8728	23.4	19.5
180	G.I. OBSTRUCTION W CC	0.9438	22.2	18.5
181	2 G.I. OBSTRUCTION W/O CC	0.6064	21.1	17.6
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.8373	23.1	19.3
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.6992	20.7	17.3
184	8 ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.6064	21.1	17.6
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.8447	24.2	20.2
186	8 DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.8508	24.3	20.3
187	8 DENTAL EXTRACTIONS & RESTORATIONS	0.8508	24.3	20.3

LTC-DRG	Description	Relative Weight	Geo-metric Average Length of Stay	5/6ths of the Geo-metric Average Length of Stay
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	0.9751	24.0	20.0
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.8839	22.9	19.1
190	8 OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.8508	24.3	20.3
191	5 PANCREAS, LIVER & SHUNT PROCEDURES W CC	1.8658	38.6	32.2
192	8 PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8658	38.6	32.2
193	1 BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	0.4586	16.9	14.1
194	8 BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	0.4586	16.9	14.1
195	8 CHOLECYSTECTOMY W C.D.E. W CC	1.8658	38.6	32.2
196	8 CHOLECYSTECTOMY W C.D.E. W/O CC	1.8658	38.6	32.2
197	5 CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	1.8658	38.6	32.2
198	8 CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	1.8658	38.6	32.2
199	8 HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	0.8508	24.3	20.3
200	3 HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	0.8508	24.3	20.3
201	4 OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	1.1899	28.5	23.8
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.7217	23.3	19.4
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.7867	20.9	17.4
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	0.8626	21.5	17.9
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.7596	23.0	19.2
206	2 DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.6064	21.1	17.6

LTC-DRG	Description	Relative Weight	Geo-metric Average Length of Stay	5/6ths of the Geo-metric Average Length of Stay
207	DISORDERS OF THE BILIARY TRACT W CC	0.6492	19.3	16.1
208	1 DISORDERS OF THE BILIARY TRACT W/O CC	0.4586	16.9	14.1
209	5 MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	1.8658	38.6	32.2
210	5 HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	1.8658	38.6	32.2
211	8 HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8658	38.6	32.2
212	8 HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.8658	38.6	32.2
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.1696	33.9	28.3
216	5 BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.8658	38.6	32.2
217	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS	1.3123	37.2	31.0
218	4 LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC	1.1899	28.5	23.8
219	8 LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC	1.1899	28.5	23.8
220	8 LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17	1.1899	28.5	23.8
223	8 MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	1.1899	28.5	23.8
224	8 SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	0.6064	21.1	17.6
225	FOOT PROCEDURES	1.0601	30.4	25.3
226	5 SOFT TISSUE PROCEDURES W CC	1.8658	38.6	32.2
227	2 SOFT TISSUE PROCEDURES W/O CC	0.6064	21.1	17.6
228	3 MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC	0.8508	24.3	20.3
229	1 HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.4586	16.9	14.1

LTC-DRG	Description	Relative Weight	Geo-metric Average Length of Stay	5/6ths of the Geo-metric Average Length of Stay
230	5 LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.8658	38.6	32.2
232	8 ARTHROSCOPY	0.8508	24.3	20.3
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	1.5135	34.5	28.8
234	3 OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	0.8508	24.3	20.3
235	FRACTURES OF FEMUR	0.7920	30.3	25.3
236	FRACTURES OF HIP & PELVIS	0.7348	26.9	22.4
237	1 SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.4586	16.9	14.1
238	OSTEOMYELITIS	0.9329	28.9	24.1
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	0.6619	21.4	17.8
240	CONNECTIVE TISSUE DISORDERS W CC	0.7160	23.1	19.3
241	1 CONNECTIVE TISSUE DISORDERS W/O CC	0.4586	16.9	14.1
242	SEPTIC ARTHRITIS	0.7943	26.2	21.8
243	MEDICAL BACK PROBLEMS	0.6072	22.3	18.6
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.5705	22.3	18.6
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.5109	19.3	16.1
246	NON-SPECIFIC ARTHROPATHIES	0.5884	21.4	17.8
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5445	21.4	17.8
248	TENDONITIS, MYOSITIS & BURSITIS	0.7830	24.3	20.3
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.6907	23.9	19.9
250	2 FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.6064	21.1	17.6
251	2 FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.6064	21.1	17.6
252	8 FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.8508	24.3	20.3

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.8368	28.5	23.8
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.6956	27.1	22.6
255	8 FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.8508	24.3	20.3
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.7491	23.3	19.4
257	8 TOTAL MASTECTOMY FOR MALIGNANCY W CC	0.4586	16.9	14.1
258	8 TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.4586	16.9	14.1
259	8 SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.4586	16.9	14.1
260	1 SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.4586	16.9	14.1
261	5 BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1.8658	38.6	32.2
262	3 BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.8508	24.3	20.3
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.3568	39.1	32.6
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.0622	33.0	27.5
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.4363	35.7	29.8
266	3 SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	0.8508	24.3	20.3
267	5 PERIANAL & PILONIDAL PROCEDURES	1.8658	38.6	32.2
268	5 SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.8658	38.6	32.2
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.3904	38.4	32.0
270	3 OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.8508	24.3	20.3

LTC-DRG	Description	Relative Weight	Geo-metric Average Length of Stay	5/6ths of the Geo-metric Average Length of Stay
271	SKIN ULCERS	0.9572	28.4	23.7
272	MAJOR SKIN DISORDERS W CC	0.7956	25.0	20.8
273	1 MAJOR SKIN DISORDERS W/O CC	0.4586	16.9	14.1
274	MALIGNANT BREAST DISORDERS W CC	0.9535	27.7	23.1
275	1 MALIGNANT BREAST DISORDERS W/O CC	0.4586	16.9	14.1
276	2 NON-MALIGANT BREAST DISORDERS	0.6064	21.1	17.6
277	CELLULITIS AGE >17 W CC	0.6711	21.6	18.0
278	CELLULITIS AGE >17 W/O CC	0.5277	19.0	15.8
279	8 CELLULITIS AGE 0-17	0.4586	16.9	14.1
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.8840	27.1	22.6
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.8190	28.3	23.6
282	8 TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.8508	24.3	20.3
283	MINOR SKIN DISORDERS W CC	0.7712	22.9	19.1
284	1 MINOR SKIN DISORDERS W/O CC	0.4586	16.9	14.1
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	1.2799	35.9	29.9
286	8 ADRENAL & PITUITARY PROCEDURES	1.1899	28.5	23.8
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.1090	32.4	27.0
288	3 O.R. PROCEDURES FOR OBESITY	0.8508	24.3	20.3
289	8 PARATHYROID PROCEDURES	1.1899	28.5	23.8
290	8 THYROID PROCEDURES	1.1899	28.5	23.8
291	8 THYROGLOSSAL PROCEDURES	1.1899	28.5	23.8
292	4 OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	1.1899	28.5	23.8
293	8 OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1899	28.5	23.8
294	DIABETES AGE >35	0.7472	23.8	19.8
295	2 DIABETES AGE 0-35	0.6064	21.1	17.6
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.7973	23.7	19.8

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6225	21.6	18.0
298	8 NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.6064	21.1	17.6
299	4 INBORN ERRORS OF METABOLISM	1.1899	28.5	23.8
300	7 ENDOCRINE DISORDERS W CC	0.7948	24.6	20.5
301	7 ENDOCRINE DISORDERS W/O CC	0.7948	24.6	20.5
302	6 KIDNEY TRANSPLANT	0.0000	0.0	0.0
303	4 KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	1.1899	28.5	23.8
304	4 KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	1.1899	28.5	23.8
305	2 KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	0.6064	21.1	17.6
306	4 PROSTATECTOMY W CC	1.1899	28.5	23.8
307	3 PROSTATECTOMY W/O CC	0.8508	24.3	20.3
308	4 MINOR BLADDER PROCEDURES W CC	1.1899	28.5	23.8
309	8 MINOR BLADDER PROCEDURES W/O CC	1.1899	28.5	23.8
310	3 TRANSURETHRAL PROCEDURES W CC	0.8508	24.3	20.3
311	8 TRANSURETHRAL PROCEDURES W/O CC	0.8508	24.3	20.3
312	4 URETHRAL PROCEDURES, AGE >17 W CC	1.1899	28.5	23.8
313	8 URETHRAL PROCEDURES, AGE >17 W/O CC	1.1899	28.5	23.8
314	8 URETHRAL PROCEDURES, AGE 0-17	0.6064	21.1	17.6
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.4618	34.2	28.5
316	RENAL FAILURE	0.9175	23.6	19.7
317	ADMIT FOR RENAL DIALYSIS	0.9238	22.1	18.4
318	7 KIDNEY & URINARY TRACT NEOPLASMS W CC	0.7798	22.5	18.8
319	7 KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.7798	22.5	18.8
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.7798	22.5	18.8

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5721	21.9	18.3
322	8 KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4586	16.9	14.1
323	2 URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.6064	21.1	17.6
324	1 URINARY STONES W/O CC	0.4586	16.9	14.1
325	3 KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.8508	24.3	20.3
326	1 KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.4586	16.9	14.1
327	8 KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.4586	16.9	14.1
328	2 URETHRAL STRICTURE AGE >17 W CC	0.6064	21.1	17.6
329	8 URETHRAL STRICTURE AGE >17 W/O CC	0.6064	21.1	17.6
330	8 URETHRAL STRICTURE AGE 0-17	0.6064	21.1	17.6
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.8240	22.9	19.1
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6263	22.3	18.6
333	8 OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.6064	21.1	17.6
334	8 MAJOR MALE PELVIC PROCEDURES W CC	1.8658	38.6	32.2
335	8 MAJOR MALE PELVIC PROCEDURES W/O CC	1.8658	38.6	32.2
336	4 TRANSURETHRAL PROSTATECTOMY W CC	1.1899	28.5	23.8
337	8 TRANSURETHRAL PROSTATECTOMY W/O CC	1.1899	28.5	23.8
338	5 TESTES PROCEDURES, FOR MALIGNANCY	1.8658	38.6	32.2
339	1 TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.4586	16.9	14.1

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
340	8 TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4586	16.9	14.1
341	5 PENIS PROCEDURES	1.8658	38.6	32.2
342	8 CIRCUMCISION AGE >17	0.4586	16.9	14.1
343	8 CIRCUMCISION AGE 0-17	0.4586	16.9	14.1
344	5 OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.8658	38.6	32.2
345	5 OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	1.8658	38.6	32.2
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.6556	20.8	17.3
347	1 MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.4586	16.9	14.1
348	2 BENIGN PROSTATIC HYPERTROPHY W CC	0.6064	21.1	17.6
349	2 BENIGN PROSTATIC HYPERTROPHY W/O CC	0.6064	21.1	17.6
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.7789	22.6	18.8
351	8 STERILIZATION, MALE	0.4586	16.9	14.1
352	4 OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	1.1899	28.5	23.8
353	8 PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.8658	38.6	32.2
354	8 UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.8658	38.6	32.2
355	8 UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	1.8658	38.6	32.2
356	8 FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	1.1899	28.5	23.8
357	8 UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.1899	28.5	23.8
358	8 UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1899	28.5	23.8

LTC-DRG	Description	Relative Weight	Geo-metric Average Length of Stay	5/6ths of the Geo-metric Average Length of Stay
359	8 UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	1.1899	28.5	23.8
360	8 VAGINA, CERVIX & VULVA PROCEDURES	1.1899	28.5	23.8
361	8 LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.4586	16.9	14.1
362	8 ENDOSCOPIC TUBAL INTERRUPTION	0.4586	16.9	14.1
363	8 D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.4586	16.9	14.1
364	8 D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4586	16.9	14.1
365	5 OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.8658	38.6	32.2
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.0345	23.9	19.9
367	1 MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.4586	16.9	14.1
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.7168	22.5	18.8
369	3 MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.8508	24.3	20.3
370	8 CESAREAN SECTION W CC	0.8508	24.3	20.3
371	8 CESAREAN SECTION W/O CC	0.4586	16.9	14.1
372	8 VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.4586	16.9	14.1
373	8 VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.4586	16.9	14.1
374	8 VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.4586	16.9	14.1
375	8 VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.4586	16.9	14.1
376	8 POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4586	16.9	14.1
377	8 POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.4586	16.9	14.1

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
378	8 ECTOPIC PREGNANCY	0.8508	24.3	20.3
379	8 THREATENED ABORTION	0.4586	16.9	14.1
380	8 ABORTION W/O D&C	0.4586	16.9	14.1
381	8 ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.4586	16.9	14.1
382	8 FALSE LABOR	0.4586	16.9	14.1
383	8 OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.4586	16.9	14.1
384	8 OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.4586	16.9	14.1
385	8 NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.4586	16.9	14.1
386	8 EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	0.4586	16.9	14.1
387	8 PREMATURITY W MAJOR PROBLEMS	0.4586	16.9	14.1
388	8 PREMATURITY W/O MAJOR PROBLEMS	0.4586	16.9	14.1
389	8 FULL TERM NEONATE W MAJOR PROBLEMS	0.4586	16.9	14.1
390	8 NEONATE W OTHER SIGNIFICANT PROBLEMS	0.4586	16.9	14.1
391	8 NORMAL NEWBORN	0.4586	16.9	14.1
392	8 SPLENECTOMY AGE >17	1.8658	38.6	32.2
393	8 SPLENECTOMY AGE 0-17	1.8658	38.6	32.2
394	4 OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.1899	28.5	23.8
395	RED BLOOD CELL DISORDERS AGE >17	0.7516	23.7	19.8
396	8 RED BLOOD CELL DISORDERS AGE 0-17	0.6064	21.1	17.6
397	COAGULATION DISORDERS	0.7827	19.2	16.0
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.7520	21.4	17.8
399	2 RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.6064	21.1	17.6

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
401	4 LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	1.1899	28.5	23.8
402	8 LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	0.8508	24.3	20.3
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	0.8996	22.0	18.3
404	1 LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.4586	16.9	14.1
405	8 ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	0.4586	16.9	14.1
406	5 MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC	1.8658	38.6	32.2
407	8 MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC	1.1899	28.5	23.8
408	4 MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC	1.1899	28.5	23.8
409	RADIOTHERAPY	0.9104	22.6	18.8
410	4 CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	1.1899	28.5	23.8
411	8 HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4586	16.9	14.1
412	8 HISTORY OF MALIGNANCY W ENDOSCOPY	0.4586	16.9	14.1
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	0.8807	20.7	17.3
414	2 OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.6064	21.1	17.6
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.5485	36.5	30.4
416	SEPTICEMIA AGE >17	0.8961	23.9	19.9
417	8 SEPTICEMIA AGE 0-17	0.8508	24.3	20.3
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.8697	24.7	20.6
419	4 FEVER OF UNKNOWN ORIGIN AGE >17 W CC	1.1899	28.5	23.8

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
420	4 FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	1.1899	28.5	23.8
421	VIRAL ILLNESS AGE >17	1.0125	25.1	20.9
422	8 VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.6064	21.1	17.6
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	0.9425	22.8	19.0
424	5 O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	1.8658	38.6	32.2
425	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION	0.5649	21.2	17.7
426	DEPRESSIVE NEUROSES	0.5777	26.6	22.2
427	1 NEUROSES EXCEPT DEPRESSIVE	0.4586	16.9	14.1
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.6617	29.1	24.3
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.5767	24.4	20.3
430	PSYCHOSES	0.4746	22.7	18.9
431	CHILDHOOD MENTAL DISORDERS	0.4875	22.0	18.3
432	8 OTHER MENTAL DISORDER DIAGNOSES	0.4586	16.9	14.1
433	1 ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.4586	16.9	14.1
439	SKIN GRAFTS FOR INJURIES	1.0808	35.0	29.2
440	WOUND DEBRIDEMENTS FOR INJURIES	1.2254	32.2	26.8
441	2 HAND PROCEDURES FOR INJURIES	0.6064	21.1	17.6
442	7 OTHER O.R. PROCEDURES FOR INJURIES W CC	1.4772	37.3	31.1
443	7 OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.4772	37.3	31.1
444	7 TRAUMATIC INJURY AGE >17 W CC	0.8051	24.4	20.3
445	7 TRAUMATIC INJURY AGE >17 W/O CC	0.8051	24.4	20.3
446	8 TRAUMATIC INJURY AGE 0-17	0.8508	24.3	20.3
447	3 ALLERGIC REACTIONS AGE >17	0.8508	24.3	20.3
448	8 ALLERGIC REACTIONS AGE 0-17	0.8508	24.3	20.3
449	2 POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.6064	21.1	17.6

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
450	1 POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4586	16.9	14.1
451	8 POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.6064	21.1	17.6
452	COMPLICATIONS OF TREATMENT W CC	0.9938	25.4	21.2
453	COMPLICATIONS OF TREATMENT W/O CC	0.7085	22.0	18.3
454	3 OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.8508	24.3	20.3
455	2 OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.6064	21.1	17.6
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.2824	35.2	29.3
462	REHABILITATION	0.6569	23.2	19.3
463	SIGNS & SYMPTOMS W CC	0.6631	23.4	19.5
464	SIGNS & SYMPTOMS W/O CC	0.5561	22.7	18.9
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.6885	20.5	17.1
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.7286	22.2	18.5
467	2 OTHER FACTORS INFLUENCING HEALTH STATUS	0.6064	21.1	17.6
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.1286	41.7	34.8
469	6 PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	0.0	0.0
470	6 UNGROUPABLE	0.0000	0.0	0.0
471	8 BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	0.8508	24.3	20.3
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	0.8622	20.7	17.3
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.1015	34.2	28.5
476	3 PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	0.8508	24.3	20.3
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.5653	35.2	29.3
478	OTHER VASCULAR PROCEDURES W CC	1.4010	33.3	27.8

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
479	2 OTHER VASCULAR PROCEDURES W/O CC	0.6064	21.1	17.6
480	6 LIVER TRANSPLANT	0.0000	0.0	0.0
481	8 BONE MARROW TRANSPLANT	1.1899	28.5	23.8
482	8 TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	1.1899	28.5	23.8
484	8 CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	1.1899	28.5	23.8
485	4 LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA	1.1899	28.5	23.8
486	5 OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	1.8658	38.6	32.2
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.1431	24.7	20.6
488	5 HIV W EXTENSIVE O.R. PROCEDURE	1.8658	38.6	32.2
489	HIV W MAJOR RELATED CONDITION	0.9854	23.7	19.8
490	HIV W OR W/O OTHER RELATED CONDITION	1.0495	23.3	19.4
491	8 MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.8658	38.6	32.2
492	8 CHEMOTHERAPY W ACUTE LEUKEMIA OR W USE OF HI DOSE CHEMOAGENT	1.1899	28.5	23.8
493	4 LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.1899	28.5	23.8
494	8 LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.1899	28.5	23.8
495	6 LUNG TRANSPLANT	0.0000	0.0	0.0
496	3 COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	0.8508	24.3	20.3
497	3 SPINAL FUSION EXCEPT CERVICAL W CC	0.8508	24.3	20.3
498	8 SPINAL FUSION EXCEPT CERVICAL W/O CC	0.8508	24.3	20.3
499	4 BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.1899	28.5	23.8
500	1 BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	0.4586	16.9	14.1

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
501	4 KNEE PROCEDURES W PDX OF INFECTION W CC	1.1899	28.5	23.8
502	4 KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.1899	28.5	23.8
503	4 KNEE PROCEDURES W/O PDX OF INFECTION	1.1899	28.5	23.8
504	8 EXTENSIVE BURNS OF FULL THICKNESS BURNS WITH MECH VENT 96+HRS WITH SKIN GRAFT	1.8658	38.6	32.2
505	3 EXTENSIVE BURNS OF FULL THICKNESS BURNS WITH MECH VENT 96+HRS WITHOUT SKIN GRAFT	0.8508	24.3	20.3
506	4 FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA	1.1899	28.5	23.8
507	8 FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA	0.8508	24.3	20.3
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA	0.8303	26.0	21.7
509	1 FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA	0.4586	16.9	14.1
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	0.9301	26.8	22.3
511	2 NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	0.6064	21.1	17.6
512	6 SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	0.0000	0.0	0.0
513	6 PANCREAS TRANSPLANT	0.0000	0.0	0.0
515	5 CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	1.8658	38.6	32.2
516	8 PERCUTANEOUS CARDIOVASC PROC W AMI	0.6064	21.1	17.6
517	3 PERC CARDIO PROC W NON-DRUG ELUTING STENT W/O AMI	0.8508	24.3	20.3
518	2 PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	0.6064	21.1	17.6

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
519	3 CERVICAL SPINAL FUSION W CC	0.8508	24.3	20.3
520	8 CERVICAL SPINAL FUSION W/O CC	0.8508	24.3	20.3
521	7 ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.6011	22.2	18.5
522	7 ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC	0.6011	22.2	18.5
523	7 ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC	0.6011	22.2	18.5
524	TRANSIENT ISCHEMIA	0.6247	22.0	18.3
525	8 OTHER HEART ASSIST SYSTEM IMPLANT	1.8658	38.6	32.2
526	8 PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W AMI	0.8508	24.3	20.3
527	8 PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W/O AMI	0.8508	24.3	20.3
528	8 INTRACRANIAL VASCULAR PROC W PDX HEMORRHAGE	1.1899	28.5	23.8
529	4 VENTRICULAR SHUNT PROCEDURES W CC	1.1899	28.5	23.8
530	8 VENTRICULAR SHUNT PROCEDURES W/O CC	1.1899	28.5	23.8
531	4 SPINAL PROCEDURES W CC	1.1899	28.5	23.8
532	1 SPINAL PROCEDURES W/O CC	0.4586	16.9	14.1
533	5 EXTRACRANIAL PROCEDURES W CC	1.8658	38.6	32.2
534	8 EXTRACRANIAL PROCEDURES W/O CC	0.4586	16.9	14.1
535	3 CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK	0.8508	24.3	20.3
536	5 CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK	1.8658	38.6	32.2
537	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W CC	1.2686	35.2	29.3
538	3 LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W/O CC	0.8508	24.3	20.3
539	3 LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W CC	0.8508	24.3	20.3

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
540	[8] LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W/O CC	0.6064	21.1	17.6
541	TRAC W MECH VENT 96+HRS OR PDX EXCEPT FACE,MOUTH & NECK DX WITH MAJOR OR	3.5184	56.2	46.8
542	TRAC W MECH VENT 96+HRS OR PDX EXCEPT FACE,MOUTH & NECK DX WITHOUT MAJOR OR	2.9337	45.9	38.3
543	[5] CRANIOTOMY W IMPLANT OF CHEMO AGENT OR ACUTE COMPLEX CNS PDX	1.8658	38.6	32.2

[1] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 1.

[2] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 2.

[3] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 3.

[4] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 4.

[5] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 5.

[6] Relative weights for these LTC-DRGs were assigned a value of 0.0000.

[7] Relative weights for these LTC-DRGs were determined after adjusting to account for nonmonotonicity (see step 5 above).

[8] Relative weights for these LTC-DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2003 MedPAR file.

Table 4.—A LISTING OF LONG-TERM CARE HOSPITALS' STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION[1].

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
012006	USA KNOLLWOOD PARK LTC HOSPITAL	01480	33660	5160
012007	LONG TERM CARE HOSP OF JACKSON, THE	01500	33860	5240
012008	SELECT SPECIALTY HOSP-BIRMINGHAM	01360	13820	1000
032000	KINDRED HOSPITAL ARIZONA PHOENIX	03060	38060	6200
032001	SELECT SPECIALTY HOSPITAL ARIZONA INC	03060	38060	6200
032002	KINDRED HOSPITAL - TUCSON	03090	46060	8520
032004	CORNERSTONE HOSPITAL OF SOUTHEAST AZ	03090	46060	8520
032005	SELECT SPECIALTY HOSPITAL ARIZONA INC	03060	38060	6200
042000	SELECT SPECIALTY HOSPITAL	04590	30780	4400
042004	ADVANCE CARE HOSPITAL	04250	26300	04
042005	SEMPERCARE HOSPITAL OF LITTLE ROCK	04590	30780	4400
042006	SELECT SPECIALITY HOSPITAL-FORT SMITH	04650	22900	2720
042007	SEMPERCARE HOSPITAL OF PINE BLUFF	04340	38220	6240
052031	BARLOW HOSPITAL	05200	31084	4480
052032	VENCOR HOSPITAL - LOS ANGELES	05200	31084	4480
052033	VENCOR HOSPITAL - SACRAMENTO	05440	40900	6920
052034	KINDRED HOSPITAL - SF BAY AREA	05000	36084	5775
052035	KINDRED HOSPITAL WESTMINSTER	05400	42044	5945
052036	KINDRED HOSPITAL - SAN DIEGO	05470	41740	7320
052037	VENCOR HOSPITAL - ONTARIO	05460	40140	6780
052038	KINDRED HOSPITAL -- SAN GABRIEL VALLEY	05200	31084	4480
052039	KINDRED HOSPITAL BREA	05400	42044	5945
052043	KENTFIELD REHABILITATION HOSPITAL	05310	41884	7360
052044	CONTINENTAL REHABILITATION HOSPITAL	05470	41740	7320
062008	CMHIP - GENERAL HOSPITAL	06500	39380	6560
062009	KINDRED HOSPITAL DENVER	06150	19740	2080
062011	CRAIG HOSPITAL	06020	19740	2080
062012	LIFECARE HOSPITALS OF DENVER	06150	19740	2080
062013	SCCI HOSPITAL - AURORA	06150	19740	2080
062014	NORTH VALLEY REHAB HOSPITAL - REHAB	06400	06	06

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
062015	SELECT SPECIALTY HOSPITAL	06150	19740	2080
062016	SEMPERCARE HOSPITAL OF COLO SPRINGS	06200	17820	1720
072003	GAYLORD HOSPITAL INC	07040	35300	5483
072004	HOSPITAL FOR SPECIAL CARE	07010	25540	3283
082000	SELECT SPECIALTY HOSPITAL WILMINGTON	08010	48864	9160
092002	MEDLINK HOSPITAL OF CAPITOL HILL	09000	47894	8840
092003	HADLEY MEMORIAL HOSPITAL	09000	47894	8840
102001	SELECT SPECIALTY HOSPITAL OF MIAMI	10120	33124	5000
102009	KINDRED HOSPITAL BAY AREA TAMPA	10280	45300	8280
102010	KINDRED HOSPITAL SOUTH FLORIDA	10050	22744	2680
102012	SPECIALITY HOSPITAL JACKSONVILLE	10150	27260	3600
102013	KINDRED HOSPITAL CENTRAL TAMPA	10280	45300	8280
102015	KINDRED HOSPITAL NORTH FLORIDA	10090	27260	3600
112000	ROOSEVELT WARM SPRINGS INST FOR REHAB	11740	12060	11
112003	SHEPHERD SPINAL CENTER	11470	12060	0520
112004	KINDRED HOSPITAL - ATLANTA	11470	12060	0520
112005	WESLEY WOODS LTC	11370	12060	0520
112006	DECATUR HOSPITAL	11370	12060	0520
112007	WELLSTAR WINDY HILL HOSPITAL	11290	12060	0520
112008	SPECIALTY HOSPITAL - SELECT AUGUSTA	11840	12260	0600
112009	SELECT SPECIALTY HOSPITAL-ATLANTA	11470	12060	0520
112010	SPECIALTY HOSPITAL AT FLOYD MED CTR	11460	40660	11
112011			42340	7520
142006	THC CHICAGO INC DBA KINDRED HOSP	14170	16974	1600
142008	THC CHICAGO INC DBA KINDRED HOSP CHGO	14141	16974	1600
142009	THC CHICAGO INC DBA KINDRED CHICAGO	14141	16974	1600
142010	RML SPECIALTY HOSPITAL	14250	16974	1600
152007	KINDRED HOSPITAL INDIANAPOLIS	15480	26900	3480
152008	KINDRED HOSPITAL INDIANAPOLIS SOUTH	15400	26900	3480
152010	SELECT SPECIALTY HOSPITAL INDIANAPOLIS	15480	26900	3480
152011	ST ELIZABETH ANN SETON HOSPITAL	15260	15	15

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
	INC			
152012	SELECT SPECIALTY HOSPITAL-NORTHWEST IN	15440	23844	2960
152013	SELECT SPECIALTY HOSPITAL-BEECH GROVE	15480	26900	3480
152014	SELECT SPECIALTY HOSPITAL-EVANSVILLE	15810	21780	2440
152015	ST ELIZABETH ANN SETON HOSPITAL OF CARMEL	15280	26900	3480
152016	SELECT SPECIALTY HOSPITAL-FT WAYNE	15010	23060	2760
152018	OUR LADY OF PEACE HOSPITAL	15700	43780	7800
152019	SELECT SPECIALTY HOSPITAL-BLOOMINGTON	15020	18020	15
152020	ST ELIZABETH ANN SETON HOSPITAL OF INDIANAPOLIS	15480	26900	3480
152021	ST ELIZABETH ANN SETON HOSPITAL OF KOKOMO	15330	29020	3850
172003	WICHITA SPECIALTY HOSPITAL	17860	48620	9040
172004	SPECIALTY HOSPITAL OF MID-AMERICA	17450	28140	3760
172005	SELECT SPECIALTY HOSPITAL OF KS CITY	17986	28140	3760
172006	SELECT SPECIALTY HOSPITAL OF TOPEKA	17880	45820	8440
172007	SELECT SPECIALTY HOSPITAL WICHITA	17860	48620	9040
182001	KINDRED HOSPITAL LOUISVILLE	18550	31140	4520
182002	CONTINUING CARE HOSP AT ST JOSEPH EAST	18330	30460	4280
182003	SELECT SPECIALTY HOSPITAL LEXINGTON	18330	30460	4280
192004	ASCENSION HOSPITAL	19020	12940	0760
192006	CORNERSTONE HOSPITAL OF BOSSIER CITY	19070	43340	7680
192007	ADVANCE CARE HOSPITAL	19250	35380	5560
192008	DIXON MEDICAL CENTER	19310	12940	0760
192009	KINDRED HOSPITAL NEW ORLEANS	19350	35380	5560
192010	LAGNIAPPE HOSPITAL	19080	43340	7680
192011	LIFECARE HOSPITAL INC	19080	43340	7680
192012	DUBUIS HOSPITAL OF ALEXANDRIA	19390	10780	0220
192013	CORNERSTONE HOSPITAL OF SOUTHWEST LA	19090	29340	3960

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
192014	GENESIS SPECIALTY HOSPITAL	19060	19	19
192015	LIFE CARE HOSPITAL OF NEW ORLEANS LLC	19430	35380	5560
192016	ST FRANCIS SPECIALTY HOSPITAL	19360	33740	5200
192019	EXTENDED CARE OF SOUTHWEST LOUISIANA	19090	29340	3960
192020	COMMUNITY REHABILITATION OF LAFAYETTE	19270	29180	3880
192022	HEALTHSOUTH NORTH REHAB HOSPITAL	19300	19	19
192023	SPECIALTY HOSPITAL OF NEW ORLEANS	19350	35380	5560
192024	DUBUIS HOSPITAL OF LAKE CHARLES	19090	29340	3960
192025	DUBUIS HOSPITAL OF SHREVEPORT	19080	43340	7680
192026	BERNICE COMMUNITY HOSPITAL	19550	33740	19
192027	OASIS REHABILITATION HOSPITAL	19160	12940	0760
192028	PROFESSIONAL REHABILITATION HOSPITAL	19140	19	19
192029	REHABILITATION HOSP OF ACADIANA	19270	29180	3880
192030	SELECT SPECIALTY HOSPITAL	19250	35380	5560
192031	CORNERSTONE HOSPITAL WEST MONROE	19070	43340	7680
192032	LOUISIANA EXTENDED CARE HOSPITAL LAFAYETTE	19270	29180	3880
192033	MEADOWBROOK REHABILITATION HOSPITAL	19270	29180	3880
192034	ST LANDRY EXTENDED CARE HOSPITAL LLC	19480	19	3880
192035	LOUISISANA EXTENDED CARE HOSP. OF NATCHITOCHES	19340	19	19
192036	HAMMOND REHABILITATION HOSPITAL	19520	19	19
192037	ST ANNE REHABILITATION HOSPITAL	19280	26380	3350
192038	LIFE CARE HOSP. OF NEW ORLEANS KENNER REGIONAL	19350	35380	5560
192039	OASIS LONG TERM ACUTE CARE HOSPITAL	19350	35380	5560
192040	SOUTHEAST REGIONAL MEDICAL CENTER	19520	19	19
192041	CLINTON REHABILITATION HOSPITAL	19180	12940	19
192042	LOUISIANA EXTENDED CARE HOSP	19060	19	19
192043	HEALTHSOUTH OF ALEXANDRIA INC	19390	10780	0220
192044			12940	0760
222000	YOUVILLE REHAB CHRONIC DISEASE HOSP	22090	15764	1123

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
222002	NORTHEAST SPECIALTY HOSP BRAINTREE	22150	14484	1123
222006	LEMUEL SHATTUCK HOSP	22160	14484	1123
222007	HEBREW REHABILITATION CENTER FOR AGED	22160	14484	1123
222010	JEWISH MEMORIAL HOSPITAL	22160	14484	1123
222026	SHAUGHNESSY-KAPLAN REHAB HOSP HOSP	22040	21604	1123
222027	NEW ENGLAND SINIAI HOSP & REHAB CENTER	22130	14484	1123
222035	SPAULDING REHAB HOSP	22160	14484	1123
222043	SUNHEALTH SPECIALTY HOSPITAL OF SOE MA	22020	39300	1123
222044	VENCOR HOSPITAL NORTH SHORE	22040	21604	1123
222045	KINDRED HOSPITAL - BOSTON	22160	14484	1123
222046	PARK VIEW SPECIALTY HOSPITAL	22070	44140	8003
232012	SELECT SPECIALTY HOSPITAL-FLINT	23240	22420	2640
232019	KINDRED HOSPITAL - DETROIT	23810	19804	2160
232020	BAY SPECIAL CARE CENTER	23080	13020	6960
232021	SELECT SPECIALTY HOSPITAL-WESTERN MICH	23600	34740	3000
232023	SELECT SPECIALTY HOSP-MACOMB CTY INC	23490	47644	2160
232024	SELECT SPECIALTY HOSPITAL-ANN ARBOR	23800	11460	0440
232025	LAKELAND SPECIALTY HOSP AT BERRIEN CTR	23100	35660	0870
232026	LIFECARE HOSPITALS OF WESTERN MICHIGAN	23600	34740	3000
232027			19804	2160
232028	SELECT SPECIALTY HOSPITAL-BATTLE CREEK	23120	12980	3720
232029	SPECTRUM HEALTH-KENT COMMUNITY CAMP	23400	24340	3000
232030			47644	2160
232031	SELECT SPECIALTY HOSPITAL-WYANDOTTE	23810	19804	2160
232032	SELECT SPECIALTY HOSPITAL - NW DETROIT	23810	19804	2160
232033	SELECT SPECIALTY HOSPITAL-SAGINAW	23720	40980	6960
232034	BORGESS-PIPP HEALTH CENTER	23020	23	3000
232035	SEMPERCARE HOSITAL AT BRONSON	23380	28020	3720

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
242004	HEALTHEAST BETHESDA LUTHERAN HOME	24610	33460	5120
242005	KINDRED HOSPITAL - MINNESOTA	24260	33460	5120
252003	RESTORATIVE CARE HOSPITAL,THE	25240	27140	3560
252005	SELECT SPECIALTY HOSPITAL-BILOXI	25230	25060	0920
252006			25	25
252007	SELECT SPECIALTY HOSPITAL JACKSON	25240	27140	3560
262001	MISSOURI REHABILITATION CTR	26540	26	26
262010	KINDRED HOSPITAL - ST LOUIS	26950	41180	7040
262011	KINDRED HOSPITAL - KANSAS CITY	26470	28140	3760
262012	ALL SAINTS SPECIAL CARE CENTER	26940	41180	7040
262013	SELECT SPECIALTY HOSPITAL	26940	41180	7040
282000	MADONNA REHABILITATION LTC HOSPITAL	28540	30700	4360
282001	SELECT SPECIALTY HOSPITAL - OMAHA	28760	36540	5920
292002	KINDRED HOSPITAL LAS VEGAS	29010	29820	4120
292003	HORIZON SPECIALTY HOSPITAL	29010	29820	4120
292004	TAHOE PACIFIC HOSPITAL- MEADOWS	29150	39900	6720
292005	SELECT SPECIALTY HOSPITAL	29010	29820	4120
292006	HEALTHSOUTH HOSPITAL AT TENAYA	29010	29820	4120
312014	MATHENY SCHOOL & HOSPITAL,THE	31350	20764	5015
322002	KINDRED HOSPITAL ALBUQUERQUE	32000	10740	0200
322003	INTEGRATED SPECIALTY HOSPITAL OF ALBUQ	32000	10740	0200
342012	KINDRED HOSPITAL GREENSBORO	34400	24660	3120
342013	LIFECARE HOSPITALS OF NC	34630	40580	6895
342014	FAYETTEVILLE SPECIALITY HOSPITAL	34250	22180	2560
342015	CAROLINAS SPECIALTY HOSPITAL 7TH FLOOR SOUTH	34590	16740	1520
342016	SEMPERCARE HOSPITAL OF WINSTON-SALEM	34330	49180	3120
352004	SCCI HOSPITAL - FARGO	35080	22020	2520
352005	SCCI HOSPITAL - CENTRAL DAKOTA	35290	13900	1010
362004	DRAKE CENTER INC	36310	17140	1640
362007	ST FRANCIS HEALTH CARE CENTRE	36730	36	36
362014	REHABILITATION HOSPITAL AT HEATHER HIL	36280	17460	1680
362015	GRACE HOSPITAL	36170	17460	1680
362016	SELECT SPECIALTY HOSPITAL-NORTHEAST OHIO, INC	36780	10420	0080
362017	SELECT SPECIALTY HOSP-COLUMBUS	36250	18140	1840

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
362018	SELECT SPECIALTY HOSPITAL-COLUMBUS	36250	18140	1840
362019	SELECT SPECIALTY HOSPITAL-CINC	36310	17140	1640
362020	SCCI HOSPITAL LIMA	36010	30620	4320
362021	SCCI HOSPITAL - MANSFIELD	36710	31900	4800
362022	SELECT SPECIALTY HOSPITAL-COL/	36250	18140	1840
362023	MAHONING VALLEY HOSPITAL	36510	49660	9320
362024	SELECT SPECIALTY HOSPITAL - YOUNGSTOWN	36510	49660	9320
362025	SPECIALTY HOSPITAL OF LORAIN	36480	17460	1680
362026	KINDRED HOSPITAL - CLEVELAND	36170	17460	1680
362027	SEMPERCARE HOSPITAL OF AKRON INC	36780	10420	0080
362028	LIFE CARE HOSPITAL OF DAYTON	36580	19380	2000
362029	REGENCY HOSPITAL OF AKRON	36780	10420	0080
372004	KINDRED HOSPITAL OKLAHOMA CITY	37540	36420	5880
372005	EDMOND SPECIALTY HOSPITAL	37540	36420	5880
372006	SELECT SPECIALTY HOSPITAL - TULSA	37710	46140	8560
372007	HILLCREST SPECIALTY HOSPITAL	37710	46140	8560
372008	SELECT SPECIALTY HOSPITAL - OKLA CITY	37540	36420	5880
372009	SELECT SPECIALTY HOSPITAL - OKLA CITY	37540	36420	5880
372011	CONTINUOUS CARE CENTER OF TULSA	37710	46140	8560
372012	SPECIALTY HOSPITAL OF MIDWEST CITY	37540	36420	5880
372015	CENTRIS	37540	36420	5880
372016	INTEGRIS BASS PAVILION	37230	37	2340
372020	ADVANCE CARE HOSPITAL OF OKLAHOMA	37540	36420	5880
392024	LIFECARE HOSPITALS OF PITTSBURGH INC	39010	38300	6280
392025	MERCY SPECIAL CARE HOSPITAL	39480	42540	7560
392026	GIRARD MEDICAL CENTER	39620	37964	6160
392027	KINDRED HOSPITAL PHILADELPHIA	39640	39	39
392028	KINDRED HOSPITAL - PITTSBURGH	39010	38300	6280
392029	SELECT SPECIALTY HOSPITAL O PITTSBURGH	39010	38300	6280
392030	SELECT SPCIALTY HOSPITAL OF PHILA / AEMC	39000	39	39
392031	SELECT SPECIALTY HOSPITAL OF JOHNSTOWN	39160	27780	3680
392032	KINDRED HOSPITAL - DELAWARE COUNTY	39620	37964	6160
392033	GOOD SHEPHERD SPECIALTY HOSPITAL	39470	10900	0240

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
392034	SCCI HOSPITAL EASTON	39590	10900	0240
392035	SCCI HOSPITAL HARRISBURG	39280	25420	3240
392036	SELECT SPECIALTY HOSPITAL OF GREENSBRG	39770	38300	6280
392037	SELECT SPECIALTY HOSPITAL ERIE	39320	21500	2360
392038	HEALTHSOUTH REHAB HOSP FOR SPECIAL SVS	39270	25420	3240
392039	SELECT SPECIALTY HOSPITAL CTR PA (CP)	39280	25420	3240
392040	SEMPERCARE HOSPITAL OF LANCASTER	39440	29540	4000
392041	HEALTHSOUTH REHAB HOSP OF GREATER PITT	39010	38300	6280
392042	KINDRED HOSPITAL - WYOMING VALLEY	39480	42540	7560
392043	KINDRED HOSPITAL AT HERITAGE VALLEY	39010	38300	6280
412001	ELEANOR SLATER HOSPITAL	41030	39300	6483
422004	SPARTANBURG HOSP FOR RESTORATIVE CARE	42110	42	42
422005	KINDRED HOSPITAL CHARLESTON	42090	16700	1440
422006	INTERMEDICAL HOSPITAL OF SC	42390	17900	1760
422007	REGENCY HOSPITAL OF FLORENCE	42200	22500	2655
432002	SELECT SPECIALTY HOSPITAL	43490	43620	7760
442007	KINDRED HOSPITAL - CHATTANOOGA	44320	16860	1560
442010	BAPTIST MEMORIAL RESTORATIVE CARE HOSP	44780	32820	4920
442011	SELECT SPECIALTY HOSPITAL-NASHVILLE	44180	34980	5360
442012	SELECT SPECIALTY HOSPITAL-KNOXVILLE	44460	28940	3840
442013	METHODIST EXTENDED CARE HOSPITAL	44780	32820	4920
442014	SELECT SPECIALTY HOSPITAL MEMPHIS	44780	32820	4920
442015	SELECT SPECIALTY HOSPITAL-NORTH KNOXVILLE	44460	28940	3840
442016	SELECT SPECIALTY HOSPITAL-TRICITIES	44810	28700	3660
452015	KINDRED HOSPITAL DALLAS	45390	19124	1920
452016	KINDRED HOSPITAL SAN ANTONIO	45130	41700	7240
452017	BAYLOR CENTER FOR RESTORATIVE CARE	45390	19124	1920
452018	HARRIS CONTINUED CARE HOSPITAL	45910	23104	2800
452019	KINDRED HOSPITAL FORT WORTH	45910	23104	2800

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
452022	SELECT SPECIALTY HOSPITAL-DALLAS	45390	19124	1920
452023	KINDRED HOSPITAL-HOUSTON	45610	26420	3360
452027	SCCI HOSPITAL HOUSTON CENTRAL	45610	26420	3360
452028	KINDRED HOSPITAL-TARRANT COUNTY	45910	23104	2800
452029	HENDRICK CENTER FOR EXTENDED CARE	45911	10180	0040
452031	MEMORIAL SPECIALTY HOSPITAL	45020	45	45
452032	CORNESTONE HOSPITAL OF HOUSTON	45610	26420	3360
452033	TEXAS CENTER FOR INFECTIOUS DISEASE	45130	41700	7240
452034	CORNERSTONE HOSPITAL OF AUSTIN	45940	12420	0640
452035	MESA HILL SPECIALTY HOSPITAL	45480	21340	2320
452036	CORPUS CHRISTI SPECIALTY HOSPITAL	45830	18580	1880
452038	TEXAS NEURO REHABILITATION CENTER	45940	12420	0640
452039	KINDRED HOSPITAL	45610	26420	3360
452040	SPECIALTY HOSPITAL OF SAN ANTONIO	45130	41700	7240
452041	TEXOMA MEDICAL CTR RESTORATIVE CARE	45564	43300	7640
452042	DUBUIS HOSP OF BEAUMONT	45700	13140	0840
452043	GULF POINTE SPECIALITY HOSPITAL	45610	26420	3360
452044	LIFECARE HOSPITAL OF DALLAS	45390	19124	1920
452045	COMPASS HOSP OF SAN ANTONIO, THE	45130	41700	7240
452046	PLAZA SPECIALTY HOSP	45610	26420	3360
452049	SELECT SPECIALTY HOSPITAL-HOUSTON HEIG	45610	26420	3360
452050	SOUTHWEST REGIONAL SPEC HOSPITAL	45770	31180	4600
452051	EAST TEXAS MED CTR SPECIALTY HOSP	45892	46340	8640
452053	CORNERSTONE HOSPITAL OF CENTRAL TEXAS	45940	12420	0640
452054	MEDICAL CITY PLANO	45310	19124	1920
452055	DUBUIS HOSPITAL OF HOUSTON	45610	26420	3360
452056	SCCI HOSPITAL OF VICTORIA	45948	47020	8750
452057	BEACON SPECIALITY HOSPITAL	45610	26420	3360
452059	LIFECARE HOSPITAL OF SAN ANTONIO	45130	41700	7240
452060	SCCI HOSPITAL OF AMARILLO	45860	11100	0320
452061	DUBUIS HOSPITAL OF TEXARKANA	45170	45500	8360
452062	WARM SPRING SPECIALITY HOSPTIAL AT LULING	45562	45	45
452063	LIFECARE HOSPITALS OF SOUTH TX INC	45650	32580	4880
452064	SCCI HOSPITAL - SAN ANGELO	45930	41660	7200
452066	PLUM CREEK SPECIALTY HOSPITAL	45860	11100	0320

LTCH Provider Number	Name of LTCH	SSA State and County Code[2]	Proposed CBSA-based Labor Market Area[3]	Current MSA-based Labor Market Area[4]
452067	IHS HOSPITAL AT DALLAS	45390	19124	1920
452068	IHS HOSPITAL AT WICHITA FALLS	45960	48660	9080
452071	KINDRED HOSPITAL-WHITE ROCK	45390	19124	1920
452072	MEMORIAL HERMANN CONTINUING CARE HOSPI	45610	26420	3360
452073	SELECT SPECIALTY HOSPITAL SAN ANTONIO	45130	41700	7240
452074	TRIUMPH HOSPITAL OF NORTH HOUSTON	45610	26420	3360
452075	TRIUMPH HOSPITAL EAST HOUSTON	45610	26420	3360
452077	HOUSTON REHABILITATION ASSOCIATES	45610	26420	3360
452078	SELECT SPECIALTY HOSPITAL SOUTH DALLAS	45390	19124	1920
452079			21340	2320
452080	TRIUMPH HOSPITAL SOUTHWEST	45610	26420	3360
452081	TRIUMPH HOSPITAL NORTHWEST	45610	26420	3360
452082			45	45
452084	SEMPER CARE HOSPITAL OF MIDLAND	45794	33260	5800
452085	REGENCY HOSPITAL OF ODESSA	45451	36220	5800
462003	SOUTH DAVIS COMMUNITY HOSPITAL	46050	36260	7160
462004	SALT LAKE SPECIALITY MEDICAL CENTER	46180	46	46
492001	LAKE TAYLOR HOSP	49641	47260	5720
492007	HOSPITAL FOR EXTENDED RECOVERY	49641	47260	5720
502001	REG HOSP FOR RESP AND COMPLEX CARE	50160	42644	7600
502002	KINDRED HOSPITAL-SEATTLE	50160	42644	7600
512002	SELECT SPECIALITY HOSPITAL	51190	16620	1480
522004	KINDRED HSPTL MILWAUKEE	52390	33340	5080
522005	LAKEVIEW NEUROREHAB CTR MIDWEST	52500	39540	6600
522006	SELECT SPECIALTY HSPTL MILWAUKEE	52390	33340	5080
522007	LIFECARE HSPTLS OF MILWAUKEE	52390	33340	5080

1 Missing values denote unavailable information.

2 First 2-digits are the SSA State code and the last 3-digits are the SSA county code.

3 Under the proposed CBSA-based labor market area designations, a 5-digit code denotes an urban area and a 2-digit code denotes a rural area.

4 Under the existing MSA-based labor market area designations, a 4-digit code denotes an urban area and a 2-digit code denotes a rural area.

[FR Doc. 05–1901 Filed 1–28–05; 12:43 pm]
BILLING CODE 4120–01–C

Federal Register

Thursday,
February 3, 2005

Part III

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans (ANA); FY 2005 Funds for the Environmental Regulatory Enhancement Program; FY 2005 Funds for New Community-Based Activities; FY 2005 for New Community-Based Projects; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans (ANA); FY 2005 Funds for the Environmental Regulatory Enhancement Program

Funding Opportunity Title: Environmental Regulatory Enhancement.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ANA–NR–0008.

CFDA Number: 93.581.

Due Date for Applications: March 25, 2005.

Executive Summary: The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2005 funds for the Environmental Regulatory Enhancement (Environmental) Program. Financial assistance is provided utilizing the competitive process in accordance with the Native American Programs Act of 1974, as amended.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed in this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities.

I. Funding Opportunity Description

The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2005 funds for new community-based projects under the competitive area: Environmental Regulatory Enhancement. This announcement contains information on financial assistance from the Environmental Regulatory Enhancement Program, authorized under section 803(d) of the Native American Programs Act of 1974 (Act), 42 U.S.C. 2991b. Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental projects that are responsive to tribal needs. In many cases, the lack of resources has resulted in a delay in action on the part of the tribes. In 1990, Congress added section 803(d) to the Native American Programs Act of 1974 to address critical issues identified by tribes before congressional committees, some of which included: The need for assistance to train professional staff to monitor and enforce tribal environmental programs; the lack of adequate data for tribes to develop environmental statutes and establish quality environmental standards; and the lack of resources to conduct studies to identify sources of pollution and determine the impact on existing environmental quality. (Pub. L. 101–408, section 2, 1990.)

The Native American Programs Act of 1974 was amended to strengthen tribal governments through building capacity in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

This program announcement will emphasize community-based, locally designed projects. This emphasis will increase the number of grants to local community organizations and expand the number of partnerships among locally-based non-profit organizations. ANA will accept applications from multiple organizations in the same geographic area.

In this announcement, ANA encourages Native American tribes and organizational leaders to propose, coordinate and implement community-based projects and services that meet the needs of its community members and create options and opportunities for future generations.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed in this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities.

ANA Administrative Policies:

Applicants must comply with the following ANA Administrative Policies:

- An applicant must provide a 20% non-Federal match of the approved project costs.
- An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body.
- A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit organization can accomplish this by providing one of the following verifiable documents: (i) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or (ii) a copy of the currently valid IRS tax exemption certificate; or (iii) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals; or (iv) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (v) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.
- If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. Applicants must provide information that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community be to served.
- Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy.
- ANA will review proposed projects to ensure applicants have considered all resources available to the community to support the project.
- Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community.
- All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to ANA on all materials developed using ANA funds.
- ANA will not accept applications from tribal components that are tribally authorized divisions unless the ANA application includes a tribal resolution.
- ANA will only accept one application per eligible entity. The first application received by ANA shall be the application considered for competition unless ANA is notified in writing which application should be considered for competitive review.

- An applicant can have only one active ANA Environmental grant operating at any given time.
- ANA funds short-term projects, not programs. Projects must have definitive goals and objectives that will be achieved by the end of the project period. All projects funded by ANA must be completed, self-sustaining, or supported by other than ANA funding at the end of the project period.
- Prior to funding the second or third year of a multi-year grant, ANA will require verification and support documentation from the Grantee that objectives and outcomes proposed in the preceding year were accomplished, and the non-Federal share has been met.
- ANA reviews the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the OWP.
- Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, and discuss the community-based delivery strategy of the project, identify and describe the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based delivery system. National and Regional organizations must describe their membership, define how the organization operates, and demonstrate Native community and/or tribal government support for the project. The type of community to be served will determine the type of documentation necessary to support the project.

Definitions

Program specific terms and concepts are defined and must be used as a guide in writing and submitting the proposed project. The funding for allowable projects in this program announcement is based on the following definitions:

Authorized Representative: The person or persons authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies.

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period is usually broken into twelve (12) month periods in a multi-year project.

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information must be provided: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe.

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community.

Completed Project: A project funded by ANA is finished, self-sustaining, or funded by other than ANA funds, and the results and outcomes are achieved by the end of the project period.

Consortium—Tribal/Village: A group of Tribes or Villages that join together either for long-term purposes or for the purpose of an ANA project.

Construction: The initial building of a facility.

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes unrelated to the actual management or implementation of the ANA project.

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Impact Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be quantifiable, measurable, verifiable and related to the outcome of the project to determine that the project has achieved its desired objective and can be independently verified through ANA monitoring and evaluation.

In-kind Contributions: In-kind contributions are property or services that benefit a federally assisted project which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed in-kind match must meet the applicable requirements found in 45 CFR parts 74 and 92.

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. Statements in an application about resources which have been committed to or support a proposed ANA project, but not supported with documentation, will be disregarded.

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-Federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a letter from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project.

Minor Renovation or Alteration: Work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Minor alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and major renovations. A minor alteration and or renovation must be incidental and essential for the project ("incidental" meaning the total alteration and renovation budget must not exceed the lesser of $150,000 or 25 percent of total direct costs approved for the entire project period.).

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization.

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months and up to 24 or 36 months to complete. A multi-year project affords the applicant an opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three-year period.

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. Objectives are an important component of Criterion III and are the foundation for the Objective Work Plans.

Objective Work Plan (OWP): The project plan the applicant will use in meeting the results and benefits expected for the project. The results and benefits are directly related to the Impact Indicators. The OWP provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed in the Objective Work Plan. ANA will require separate OWPs for each year of the project. (Form OMB# 0980–0204 exp. 10/31/06)

Partnerships: Agreements between two or more parties that will support the development and implementation of the proposed project. Partnerships include other community-based organizations or associations, tribes, Federal and State agencies and private or non-profit organizations.

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Resolution: Applicants are required to include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution must indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any eligible matching funds (if applicable).

Sustainable Project: A sustainable project is an ongoing program or service that can be maintained without additional ANA funds.

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self-sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well-being, and culture of the people that reside and work in the community.

Total Approved Project Costs: The sum of the Federal request plus the non-Federal share.

Program Area

Environmental Regulatory Enhancement

The strengthening of tribal governments or organizations through capacity building in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture for Native American communities.

Program Areas of Interest include:

- Projects to develop regulations, ordinances and laws to protect the environment;
- Projects to develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions to meet tribal and Federal regulatory requirements;
- Projects that promote environmental training and education of tribal employees;
- Projects that develop technical and program capability to monitor compliance and enforcement of tribal and Federal environmental regulations, ordinances, and laws.

Priority Area 1

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $3,000,000.

Anticipated Number of Awards: 20 to 30.

Ceiling on Amount of Individual Awards Per Budget Period: $250,000.

Floor on Amount of Individual Awards Per Budget Period: $50,000.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Average Projected Award Amount: $125,000.

Length of Project Periods:

12 month project and budget period;

17 month project and budget period;

24 month project with two 12 month budget periods;

36 month project with three 12 month budget periods.

III. Eligibility Information

1. Eligible Applicants

Native American tribal governments (federally recognized).

Native American tribal organizations (other than federally recognized tribal governments).

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Others (*see* Additional Information on Eligibility below).

Additional Information on Eligibility

- Federally Recognized Indian tribes;
- Incorporated non-federally and State recognized Indian tribes;
- Alaska Native Villages, as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or non-profit village consortia;
- Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Other tribal or village organizations or consortia of Indian tribes; and
- Tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs.

Please refer to Section I. Funding Opportunity Description, to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

2. Cost Sharing/Matching

Yes.

Matching/Cost-Sharing

Grantees are required to meet a non-Federal share of the project costs, in accordance with 42 U.S.C. 2991(b)(3)(e)(1). Grantees must provide at least *20* percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting *$100,000* in Federal funds (based on an award of *$100,000* per budget period) must provide a match of at least *$25,000* (*20%* of the total approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal dollars. Lack of

supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

3. Other

All Applicants must have a Dun & Bradstreet Number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the governmentwide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com*.

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Disqualification Factors

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Applications that do not include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period will be considered non-responsive and will not be considered for competition.

If the applicant is not a tribe or Alaska Native Village government, applications that do not include proof that a majority of the governing board of directors is representative of the community to be served will be considered non-responsive and will not be considered for competition.

Please see Section III.2 Other, concerning requirements for the cost matching which do not impact the responsiveness of an application for competitive review.

IV. Application and Submission Information

1. Address To Request Application Package

To learn more about ANA and receive information about Training and Technical Assistance (T/TA) contact:

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, W.VA.
Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, VA 22101. Phone: 888–221–9686. Fax: 703–821–368. e-mail: *kking@namsinc.org; http://www.anaeastern.org*.

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY.
ACKCO, Inc., 1326 N. Central, Suite 208, Phoenix, Arizona 85004. Toll Free: 800–525–2859; Direct: 602–253–9211; Fax 602–253–9135. Theron Wauneka, Project Manager, e-mail: *theron.wauneka@ackco.com; http://www.anawestern.org*.

Region III: Alaska.
Native American Management Services, Inc., 11723 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577. Toll Free 877–770–6230. Direct: 907–694–5711. Fax 907–694–5775. P.J. Bell, Project Manager, e-mail: *region3@gci.net; http://www.anaalaska.org*.

2. Content and Form of Application Submission

Please refer to Section I. Funding Opportunity Description, to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

Application Submission: Each application should include one signed original and two additional copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, contain an original signature by an authorized representative, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. A complete application for assistance under this Program Announcement consists of Three Parts.

Part One includes the SF 424, other required government forms, and other required documentation. Part Two of the application is the project narrative. This section of the application may not exceed 40 pages, the line-item budgets, budget justifications and the OWP form (OMB Control Number 0980–0204 exp 10/31/2006) will be exempt from the page limitation. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

Electronic Submission: While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that have not yet received clearance from Grants.gov. While electronic submission of applications may be available in the next fiscal year for this program, no electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

Organization and Preparation of Application: Due to the intensity and pace of the application review and

evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the table below. ANA strongly suggests applicants label the application for ease of reviewing. The application must begin with the information requested in Part One of the chart in the prescribed order. Utilizing this format will ensure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format will reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

ANA Application Format: ANA requires all applications to be labeled in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including Government Forms, certifications and assurances) must be numbered consecutively (for example, the first page of the application is the SF 424 and must be labeled as page one). The paper size shall be 8.5 x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. (Note: The 1.5 line spacing does not apply to the Project Abstract Form, Appendices, the Table of Contents, the Objective Work Plans, and the Budget.) The font size shall be 12-point and the font type shall be Times New Roman.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date: March 25, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

PART ONE—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

What to submit	Required content	Required form or format	When to submit
Table of Contents	See Section IV	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By application closing date.
SF424	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
SF424A	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
SF424B	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
Grant Application Data Summary (GADS) form—Environmental.	See Section I	ANA Form: OMB Clearance Number 0970–0263 exp. 3/31/07 *http://www.acf.hhs.gov/programs/ana* (Go to Forms link to obtain the document)	By application closing date.
Proof of Non-Profit Status.	See Section III	As described in this announcement under Section III "Additional Information on Eligibility".	By application closing date.
Resolution	See Section I	As described in this announcement under Section I "Definitions"	By application closing date.
Board of Directors Documentation.	See Section I	As described in this announcement under Section I "ANA Administrative Policies".	By application closing date.
Audit Letter	See Section I	A Certified Public Accountant's "Independent Auditors' Report on Financial Statement." This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $500,000 or more of federal funds). Applicant must also include only that portion of the audit document titled "Supplemental Schedule of Expenditures of Federal Awards".	By application closing date.
Indirect Cost Agreement.	See Section V	Organizations and Tribes must submit a current indirect cost agreement (if claiming in-direct costs) that aligns with the approved ANA project period. The In-direct Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By application closing date.
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	See Section III	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program regulations. (if applicable).	By application closing date.
Certification regarding Maintenance of Effort.	See Section I	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	See Section IV	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
Environmental Tobacco Smoke Certification.	See Section IV	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.

PART TWO—APPLICATION REVIEW CRITERIA

What to submit	Required content	Required form or format ANA application review criteria this section may not exceed 40 pages	When to submit
Criteria One (10 pts) ..	See Section V	Introduction and Project Summary/Application Format ..... Include the ANA Project Abstract form (OMB # 0980–0204 exp. 10/31/06).	By application closing date.
Criteria Two (20 pts) ..	See Section V	Need for Assistance	By application closing date.
Criteria Three (25 pts)	See Section V	Project Approach—Include an Objective Work Plan (OWP) form (OMB # 0980–0204 exp. 10/31/2006) for each 12 month budget period. A 17-month project period requires only one OWP ..... **Note:** The OWP is not included in the page count for this Part. ..	By application closing date.
Criteria Four (15 pts),	See Section V	Organizational Capacity	By application closing date.
Criteria Five (15 pts) ..	See Section V	Project Impact/Evaluation	By application closing date.
Criteria Six (15 pts)	See Section V	Budget and Budget Justification/ Cost Effectiveness ..... **Note:** The line item budget and budget justification are not included in the page count for this Part..	By application closing date.

PART THREE—APPENDIX

What to submit	Required content	Required form or format this section may not exceed 20 pages	When to submit
Support Documentation.	See Section V	Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: Letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers or returned to the applicant.	By application closing date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.

4. Intergovernmental Review

Applications are not subject to Executive Order 12372.

5. Funding Restrictions

ANA does not fund:

- Activities in support of any foreseeable litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.
- ANA does not fund duplicative projects or allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR 1336, subpart C, but before funding decisions are complete (*see* Section I. Funding Opportunity Description—ANA Administrative Policies regarding short-term projects).
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.
- The purchase of real property or construction because these activities are not authorized by the Native American Programs Act of 1974, as amended.
- Core administration (*see* Definitions) functions, or other activities, that essentially support only the applicant's ongoing administrative functions and are not related to the proposed project.
- Costs associated with fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award.
- Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, tribe, or village.
- Activities that are not responsive to Environmental Regulatory Enhancement program goals.
- Major renovations or alterations are prohibited activities because these activities are not authorized under the Native American Programs Act of 1974 as amended. Minor alterations, as defined in this announcement, may be allowable.
- ANA will not fund activities by a consortium of tribes that duplicate activities for which a consortium member tribe also receives funding from ANA.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date.

Applications should be mailed to: Attention: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: Attention: Tim Chappelle, U.S. Department of Health and Human Services, Office of Grants Management, Division of Discretionary Grant, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how performance indicators under economic and social development and governance projects can be monitored, evaluated and verified.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number of elders participating in the activity during that reporting period.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate, (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent

organization that the applicant organization is a local non-profit affiliate.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, *per diem*, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect

cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach

Project Approach (25 Points):

The Project Approach narrative must be clear and concise. The narrative must include a detailed project description with goals and objectives. It must discuss the project strategy and implementation plan over the project period. The applicant must use the Objective Work Plan (OWP) form to identify the project objectives, time frames, proposed activities, results and benefits expected and criteria for evaluating results and benefits, as well as the individuals responsible for completing the objectives and performing the activities. Within the results and benefits section of the OWP the applicant must provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. In this criterion, the applicant describes how the project description, objective(s), approach and strategy are inter-related. The applicant must also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project, utilizing the column for Non-Salaried Personnel to list the hours incurred for these activities. The applicant must discuss "Leveraged Resources" (*see* Definitions) used to strengthen and broaden the impact of the proposed project. The applicant must discuss how commitments and contributions from other entities will enhance the project. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds.

Objectives and Need for Assistance

Need for Assistance (20 Points):

Applicant must show a clear relationship between the proposed project, the Environmental Regulatory Enhancement strategy, and the community's long-range goals. The need for assistance must clearly identify the physical, economic, social, financial, governmental, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the community (see Definitions) to be affected by the project and the community involvement in the project. The applicant must describe the community's long-range goals, the community planning process, and how the project supports the community goals. The applicant must describe how the proposed goals, objectives, and activities reflect the Environmental Regulatory needs of the local community. Discuss the geographic location of the project and where the project and grant will be administered. Applicant must describe how the proposed project objectives and activities relate to a locally determined strategy.

The applicant must provide documentation of the community's support for the proposed project. Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, identify the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based project delivery strategy. National and Regional organizations must also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Proposed project objectives support the identified need and must be measurable.

Budget and Budget Justification

Budget and Budget Justification/Cost Effectiveness (15 Points):

An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share and cite source(s) of funding. The applicant must provide a detailed line-item Federal and non-Federal share budget by year for each year of project funds requested. A budget justification narrative to support the line-item budget request must be included for each year of project funds requested. The budget must include a line item justification for each Object Class Category listed under Section B: "Budget Categories" of the "Budget Information-Non Construction Programs" (SF 424A) form. The line-item budget and budget justification narrative must include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

The non-Federal budget share must identify the source and be supported by letters of commitment (*see* Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization or individual will support a project. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters, as they do not factually establish the authenticity

of other resources and do not offer or bind specific resources to the project.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a copy of its current Indirect Cost Rate Agreement must be included in the application, with all costs broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement, may not be able to claim the allowable cost, may have the grant award amount reduced, or may experience a delay in grant award.

Applicants are strongly encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one regional ANA post-award grant training and technical assistance workshop. This expenditure is allowable for new grant recipients and optional for grantees that have had previous ANA grant awards, and will be negotiated upon award. Applicants may also include costs for two staff persons to attend the ACF National Native American Conference.

Cost Effectiveness:

This section of the criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving environmentally sound and healthy Native American communities. Applicants demonstrate this by: summarizing partnerships and the efficient use of leveraged resources; explaining the impact on the identified community through measurable project outcomes, and presenting a project that is completed, self-sustaining or supported by other than ANA funds by the end of the project period.

Organizational Profiles

Organizational Capacity (15 Points):

In this criterion, the application provides information on the management structure of the applicant and the organizational relationships with its cooperating partners. Include an organizational chart that indicates where the proposed project will fit in the existing structure. Demonstrates experience in the program area. Describe the administrative structure, and the applicant's ability to administer and implement a project of the proposed scope and its capacity to fulfill the implementation plan. Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds.

Applicants must list all current sources of Federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues must be discussed in this criterion.

Applicants must provide "staffing and position data" to include a proposed staffing pattern for the project where the applicant highlights the new project staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Applicant must provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff. Full position descriptions are required to be submitted and included in the Appendix. Applicant must explain how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals must be included. (Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant.)

If applicable, applicant must identify consortium membership. The consortium applicant must be the recipient of the funds. A consortium applicant must be an "eligible entity" as defined by this Program Announcement and the ANA regulations. Consortium applicants must include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortium members supporting the ANA application. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes that duplicate activities for which member Tribes also receive funding from ANA. The consortium application must identify the role and responsibility of each participating consortium member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

Results or Benefits Expected

Project Impact/Evaluation (15 Points):

In this criterion, the applicant will discuss the "Impact Indicators" (*see* Definitions) and the benefits expected as a result of this project. Impact indicators identify qualitative and quantitative data directly associated with the project. Each applicant must submit five impact indicators to support the applicant's project. Two of the five are standard and required across all ANA programs. For each impact indicator submitted the applicant must discuss the relevance of the impact indicators to the project, the method used to track the indicator and the method used to determine project success. Impact indicators will be reported to ANA in the grantee's quarterly report. The applicant must indicate a target number to be achieved for the required standard impact indicators. In addition to the two standard required impact indicators, an applicant must also submit three additional indicators. These three impact indicators may be selected from the suggested list below, or they may be developed for a specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and project specific indicators. The two standard required impact indicators are: (a) Number of partnerships formed; and (b) amount of dollars leveraged beyond the required NFS match. The suggested ANA indicators are: (1) The number of environmental regulations, codes or ordinances created; (2) the number of people to successfully complete a workshop/training; (3) the number of workshops/trainings provided; (4) types of capacity building systems created and implemented to support environmental program functions; (5) identification of tribal or village government regulations, codes or ordinances that were enacted and adopted; (6) the number of regulations, codes or ordinances successfully enforced; and (7) number of infrastructure and administrative systems, including policies and procedures developed and implemented.

The applicant should discuss the projects value and long-term impact to the participants and the community and explain how the information relates to the proposed project goals, objectives and outcomes. The applicant should discuss how the project will be completed, self-sustaining, or supported by other than ANA funds at the end of the project period. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period or quarter (if applicable). Project outcomes should support the identified need and should be measurable and quantifiable.

Introduction—Project Summary/ Abstract

Introduction and Project Summary/ Application Format (10 Points):

Introduction and Project Summary: Using the ANA Project Abstract form

(OMB Control Number 0980–0204, Exp. 10/31/2006), the applicant must include: the name of the applicant, the project title, the Federal amount requested, the amount of matching funds to be provided, length of time required to accomplish the project, the goal of the project, a list of the project objectives (not activities), the estimated number of people to be served and the expected outcomes of the project.

In addition to the Project Abstract form, the applicant will provide an introductory summary narrative that includes: An overview of the project, a description of the community to be served, the location of the identified community, a declarative statement identifying the need for the project, and a brief overview of the project's objectives, strategy and community or organizational impact.

Application Format: Applicants are required to submit applications in a standard format, following the ANA requirements on application length, font, numbering, line spacing, etc. Please refer to Section IV Part 2, "Content and Form of Application Submission" for detailed formatting instructions.

2. Review and Selection Process:

No grant award will be made under this announcement on the basis of an incomplete application.

Initial Screening: Each application submitted under an ANA program announcement will undergo a pre-review screening to determine: (a) Timeliness—the application was received by 4:30 p.m. eastern time on the closing date; (b) the Federal request does not exceed the upper value of the dollar range specified; (c) the applicant has submitted a current signed and dated resolution from the governing body; and, (d) if the applicant is not a tribe or Alaska Native village government, the applicant has submitted proof a majority of the board of directors is representative of the community to be served. An application that does not meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants with incomplete applications will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. The notification will include the reviewer comments. Applicants are not ranked based on general financial need. Applicants who are initially excluded from competition because of ineligibility may appeal the agency's decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

Competitive Review Process: Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the Evaluation Criteria. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability of ANA to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria standardizes the review of each application and distributes the number of points more equitably. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. A determination will be made as to whether the project is an effective use of Federal funds.

Application Review Criteria: Applicants will be reviewed based on the following criteria and points: ANA's criteria categories are Introduction and Project Summary/Application Format; Need for Assistance; Project Approach; Organizational Capacity; Project Impact/Evaluation; and Budget and Budget Narrative/Cost Effectiveness.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and recommendations; an analysis by ANA staff; review of previous ANA grantee's past performance; comments from State and Federal agencies having contract and grant performance related information; and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Approved But Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

3. Anticipated Announcement and Award Dates

Approximately 120 days after the application due date, the successful applicants will be notified by mail through the issuance of a Financial Assistance Award document which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and sent to the applicant's Authorizing Official. Applications not funded in this competition will be notified in writing.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR Part 74.

45 CFR Part 92.

45 CFR part 1336, subpart C, and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974.

3. Reporting Requirements

Programmatic Reports: Quarterly.

Financial Reports: Quarterly.

Special Reporting Requirements: An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial Status Reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final SF 269 report shall be due 90 days after the end of the project period.

VII. Agency Contacts

Program Office Contact: ANA Applicant Help Desk, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor–West, Washington, DC 20447–0002. Phone: 1–877–922–9262. E-mail: *ana@acf.dhhs.gov*.

Grants Management Office Contact: Tim Chappelle, ACF, Office of Grants Management, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor–West, Washington, DC 20447–0002. Phone: 202–401–2344. E-mail: *tichappelle@acf.hhs.gov*.

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants should check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262. Due to the new application and program additions and modifications, ANA strongly encourages all prospective applicants to participate in free pre-application training.

Applicants will not be sent acknowledgements of received applications.

Dated: January 26, 2005.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 05–1898 Filed 2–2–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans (ANA); FY 2005 Funds for New Community-Based Activities

Funding Opportunity Title: Native Language Preservation and Maintenance.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ANA–NL–0016.

CFDA Number: 93.587.

Due Date for Applications: April 1, 2005.

Executive Summary: The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2005 funds for new community-based activities under ANA's Native Language program. Financial assistance is provided utilizing a competitive process in accordance with the Native American Programs Act of 1974, as amended. ANA provides financial assistance to eligible applicants for the purpose of assisting Native Americans in assuring the survival and continuing vitality of their languages. Grants are provided under the following two categories: Category I Assessment Grants are used to conduct the assessment needed to identify the current status of the Native American language(s) to be addressed and to establish community long-range language goals; and, Category II Design and/or Implementation Grants are to design and/or implement a preservation language project that will contribute to the achievement of the community's long-range language goal(s).

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed in this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities.

I. Funding Opportunity Description

In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed only about 150 are still spoken or remembered today. Furthermore, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken by the most elderly. In response to this testimony, the Congress passed the Native American Languages Act of 1992 (the Act), Pub. L. 102–524, to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of the Act was an important step in an attempt to ensure the survival and continuation of Native languages. It provided the foundation upon which tribal nations can rebuild their economic strength and enhance the rich cultural diversity. The Federal government recognizes the substantial loss of Native American languages over the past several hundred years, and acknowledges the nature and magnitude of the status of Native American languages will be better defined when eligible applicants under the Act have completed language assessments.

The Administration for Native Americans (ANA) believes that the responsibility for achieving self-sufficiency rests with the governing bodies of Indian Tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs that support the community's long-range goals.

Therefore, since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity; activities proposed under this program announcement will contribute to the social development of Native communities and significantly contribute to their efforts toward self-sufficiency. The Administration for Native Americans recognizes that eligible applicants must have the opportunity to develop their own language plans, improve technical capabilities, and have access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This program announcement reflects these special needs and circumstances.

In support of the Presidential Executive Orders on Asian American and Pacific Islanders, Community-based

Alternatives for Individuals with Disabilities, and Faith-based and Community Organizations, ANA encourages Native communities to address the needs of people with disabilities, and invites eligible faith-based and community organizations to apply.

This program announcement will emphasize community-based, locally designed projects. This emphasis will increase the number of grants to local community organizations and expand the number of partnerships among locally based non-profit organizations. ANA will accept applications from multiple organizations in the same geographic area. Although Tribes are limited to three simultaneous ANA grants (one each under SEDS, Language and Environmental programs) at any one time, this clarification allows other community-based organizations to apply for ANA funding, provided the objectives and activities do not duplicate currently funded projects serving the same geographic area.

In response to this announcement, ANA encourages Native American tribes and organizational leaders to propose, coordinate and implement community-based projects to meet the needs of its community members and develop options and opportunities for future generations.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the preservation and maintenance of Native American languages.

Financial assistance under the Native Language program is provided utilizing a competitive process in accordance with the Native American Programs Act of 1974, as amended.

This program is authorized by the Native American Programs Act, 42 U.S.C. 2991 *et seq.*

ANA Administrative Policies

Applicants must comply with the following ANA Administrative Policies:

- An applicant must provide a 20% non-Federal match of the approved project costs. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a), under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions).
- An application from a tribe, Alaska Native Village or Native American organization must be from the governing body.
- A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit organization can accomplish this by providing one of the following verifiable documents: (i) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or (ii) a copy of the currently valid IRS tax exemption certificate; or (iii) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals; or (iv) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (v) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determination of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA eligibility.
- If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. Applicants must provide information that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.
- Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy.
- ANA will review proposed projects to ensure applicants have considered all resources available to the community to support the project.
- Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community.
- All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to ANA on all materials developed using ANA funds.
- ANA will not accept applications from tribal components that are tribally authorized divisions unless the ANA application includes a tribal resolution.
- ANA will only accept one application per eligible entity. The first application received by ANA shall be the application considered for competition unless ANA is notified in writing which application should be considered for competitive review.
- An applicant can have only one active ANA Native Language grant operating at any given time.
- ANA funds short-term projects, not programs. Projects must have definitive goals and objectives that will be achieved by the end of the project period. All projects funded by ANA must be completed, self-sustaining, or supported by other than ANA funding at the end of the project period.
- Prior to funding the second or third year of a multi-year grant, ANA will require verification and support documentation from the grantee that objectives and outcomes proposed in the proceeding year were accomplished, and the non-Federal share requirement has been met.
- ANA reviews the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the OWP.
- Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, and discuss the community-based delivery strategy of the project, identify and describe the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based delivery system. National and Regional organizations must describe their membership, define how the organization operates, and demonstrate Native community and/or tribal government support for the project. The type of community to be served will determine the type of documentation necessary to support the project.

Definitions

Program specific terms and concepts are defined and should be used as a guide in writing and submitting the proposed project. The funding for allowable projects in this program

announcement is based on the following definitions:

Authorized Representative: The person or person(s) authorized by tribal or Organizational resolution to execute documents and other actions required by outside agencies.

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information should be provided: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe.

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community.

Completed Project: A project funded by ANA is finished, self-sustaining, or funded by other than ANA funds, and the results and outcomes are achieved by the end of the project period.

Consortium—Tribe/Village: A group of tribes or Villages that join together either for long-term purposes or for the purpose of an ANA project.

Construction: The initial building of a facility.

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes that are unrelated to the actual management or implementation of the ANA project.

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Impact Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be quantifiable, measurable, verifiable and related to the outcome of the project to determine that the project has achieved its desired objective and can be independently verified through ANA monitoring and evaluation.

In-kind Contributions: In-kind contributions are property or services which benefit a federally assisted project or program and which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed in-kind match must meet the applicable requirements found in 45 CFR parts 74 and 92.

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. Statements about resources which have been committed to support a proposed project made in the application without supporting documentation will be disregarded.

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-Federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a letter from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project.

Minor Renovation or Alteration: Work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Minor alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and major renovations. A minor alteration and or renovation must be incidental and essential for the project ("incidental" meaning the total alteration and renovation budget must not exceed the lesser of $150,000 or 25 percent of total direct costs approved for the entire project period.).

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as day care, education, and training.

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months and up to 24 or 36 months to complete. A multi-year project affords the applicant an opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three-year period.

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. Objectives are an important component of Criterion III and are the foundation for the Objective Work Plans.

Objective Work Plan (OWP): The project plan the applicant will use in meeting the results and benefits expected for the project. The results and benefits are directly related to the Impact Indicators. The OWP provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed in the Objective Work Plan. ANA will require separate OWPs for each year of the project. (Form OMB# 0980–0204 exp 10/31/2006)

Partnerships: Agreements between two or more parties that will support the development and implementation of the

proposed project. Partnerships include other faith-based or community-based organizations or associations, tribes, Federal and State agencies and private or non-profit organizations, which may include faith-based organizations.

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Resolution: Applicants are required to include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution should indicate who is authorized to sign documents and negotiate on behalf of the tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-Federal matching funds (if applicable).

Sustainable Project: A sustainable project is an ongoing program or service that can be maintained without additional ANA funds.

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self-sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well being, and culture of the people that reside and work in the community.

Total Approved Project Costs: The sum of the Federal request and the non-Federal share.

Please note that this announcement is divided into two program areas. The first program area is: Category I Assessment Grants and the second program area is: Category II Design and/or Implementation Grants. Information on the second program area immediately follows section VIII of program area one. The SF 424 must clearly indicate the correct program area you are applying for.

Priority Area 1

Native Language Preservation and Maintenance: Category I Assessment Grants

Description

The purpose of an Assessment Grant is to conduct an assessment of the current status of the language(s) to be addressed in order to establish community long-range goal(s) to ensure its survival.

Program Area of Interest under Category I:

- A project for data collection and compilation that surveys the current language status through a "formal" method (*e.g.*, work performed by a linguist, and/or a language survey conducted by community members) or an "informal" method (*e.g.*, a community consensus of the language status based on information provided by elders, tribal scholars, and/or other community members) with the development of long range language preservation goals and uses elders in the development of these goals. The assessment data should capture, at a minimum, the following data: Number of speakers; Age of speakers; Gender of speakers; Level(s) of fluency; Number of first language speakers (Native language as the first language acquired); Number of second language speakers (Native language as the second language acquired); Where Native language is used (*e.g.*, home, court system, religious ceremonies, church, media, school, governance and cultural activities); Source of data (formal and/or informal); and, Rate of language loss or gain.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $1,000,000.

Anticipated Number of Awards: 10–15.

Ceiling on Amount of Individual Awards Per Budget Period: $100,000.

Floor on Amount of Individual Awards Per Budget Period: $25,000.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Average Projected Award Amount: $50,000.

Length of Project Periods: 12 month project and budget period.

III. Eligibility Information

1. Eligible Applicants

Native American tribal governments (federally recognized).

Native American tribal organizations (other than federally recognized tribal governments).

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Others (*see* Additional Information on Eligibility below).

Additional Information on Eligibility

- Federally recognized Indian tribes.
- Consortia of Indian tribes.
- Incorporated non-federally recognized tribes.
- Incorporated non-profit multi-purpose community-based Indian organizations.
- Urban Indian Centers.
- National or regional incorporated non-profit Native American organizations with Native American community-specific objectives.
- Alaska Native villages, as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or non-profit village consortia.
- Incorporated non-profit Alaska Native multi-purpose community-based organizations.
- Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects.
- Non-profit Native organizations in Alaska with village specific projects.
- Public and non-profit private agencies serving Native Hawaiians.
- Public and non-profit private agencies serving native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands (the populations served may be located on these islands or in the United States).
- Tribally-controlled Community Colleges, tribally-controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands which serve Native peoples.
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs.

Please refer to Section I. Funding Opportunity Description, to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

2. Cost Sharing/Matching

Yes.

Matching/Cost-Sharing

Grantees are required to meet a non-Federal share of the project costs, in accordance with 42 U.S.C. 2991(b)(3)(e)(1). Grantees must provide at least *20* percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $*100,000* in Federal funds (based on an award of $*100,000* per budget period) must provide a match of at least $*25,000* (*20%* of the total

approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal dollars. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

3. Other

All Applicants must have a Dun & Bradstreet Number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Applications that do not include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period will be considered non-responsive and will not be considered for competition.

If the applicant is not a tribe or Alaska Native Village government, applications that do not include proof that a majority of the governing board is representative of the community to be served will be considered non-responsive and will not be considered for competition (*see* Section I. Funding Opportunity Description-Definitions, for information on resolutions).

Please see Section III.2 Other, concerning requirements for the cost matching which do not impact the responsiveness of an application for competitive review.

IV. Application and Submission Information

1. Address To Request Application Package

To learn more about ANA and receive information about Training and Technical Assistance (T/TA) contact the regional T/TA providers at:

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO,MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV
Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, VA 22101. Phone: 888–221–9686; Fax: 703–821–368. E-mail: *kking@namsinc.org.* URL: *http://www.anaeastern.org.*

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY
ACKCO, Inc., 1326 N. Central, Suite 208, Phoenix, Arizona 85004. Toll-Free: 800–525–2859; Direct: 602–253–9211; Fax 602–253–9135. Theron Wauneka, Project Manager. E-mail: *theron.wauneka@ackco.com.* URL: *http://www.anawestern.org.*

Region III: Alaska.
Native American Management Services, Inc., 11723 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577. Toll-Free 877–770–6230; Direct: 907–694–5711; Fax 907–694–5775. P.J. Bell, Project Manager. E-mail: *region3@gci.net.* URL: *http://www.anaalaska.org.*

Region IV: American Samoa (AS), Guam, HI, Commonwealth of Northern Mariana Islands (CNMI).
Council for Native Hawaiian Advancement, 33 South King Street, Suite 513, Honolulu, Hawaii 96813. Toll-Free 800–709–2642; Local 808–521–5011; Fax: 808–521–4111. Lilia Kapuniai, Vice President, Community Development. E-mail: *info@anapacific.org.* URL: *http://www.anapacific.org.*

2. Content and Form of Application Submission

Please refer to Section I, "Funding Opportunity Description" to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

Application Submission: Each application should include one signed original and two additional copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, an original signature by an authorized representative, have original signatures, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. A complete application for assistance under this Program Announcement consists of Three Parts. Part One is the SF 424, Required Government Forms, and other required documentation. Part Two of the application is the project narrative. This section of the application may not exceed 40 pages. The line-item budgets, budget justifications and the OWP form (OMB Control Number 0980–0204, exp 10/31/2006) will be exempt from the page limitation. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20 page limit applies only to projects

that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

Electronic Submission: While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that have not yet received clearance from Grants.gov. While electronic submission of applications may be available in the next fiscal year for this program, no electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the table below. ANA strongly suggests applicants label the application for ease of reviewing. The application must begin with the information requested in Part One in the prescribed order of the following table. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format will reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding decisions.

ANA Application Format: ANA requires all applications to be labeled in compliance with the format provided in this program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including Government Forms, certifications and assurances) must be numbered consecutively (for example, the first page of the application is the SF 424 and must be labeled as page one). The paper size shall be 8½ x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. (Note: the 1.5 line spacing does not apply to the Project Abstract Form, Appendices, the Table of Contents, the Objective Work Plans, and the Budget.) The font size shall be 12-point and the font type shall be Times New Roman.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date: April 1, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

What to submit	Required content	Required form or format	When to submit
Table of Contents	See Section IV	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By announcement closing date.
SF424	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By announcement closing date.
SF424A	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By announcement closing date.
SF424B	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By announcement closing date.
Grant Application Data Summary (GADS) form—Native Language.	See Section I	ANA Form: OMB Clearance Number 0970–0263 exp. 3/31/07 *http://www.acf.hhs.gov/programs/ana* (Go to Forms link to obtain the document).	By announcement closing date.
Proof of Non-Profit Status	See Section III	As described in this announcement under Section III "Additional Information on Eligibility".	By announcement closing date.
Resolution	See Section I	As described in this announcement under Section I " Definitions".	By announcement closing date.
Board of Directors Documentation.	See Section I	As described in this announcement under Section I "ANA Administrative Policies".	By announcement closing date.
Audit Letter	See Section I	A Certified Public Accountant's "Independent Auditors' Report on Financial Statement." This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $500,000 or more of federal funds). Applicant must also include only that portion of the audit document titled "Supplemental Schedule of Expenditures of Federal Awards".	By announcement closing date.
Indirect Cost Agreement	See Section V	Organizations and Tribes must submit a current indirect cost agreement (if claiming in-direct costs) that aligns with the approved ANA project period. The In-direct Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By announcement closing date.
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	See Section III	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) (3) of the Native American Program regulations. (if applicable).	By announcement closing date.
Certification regarding Maintenance of Effort.	See Section I	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By announcement closing date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	See Section IV	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By announcement closing date.
Environmental Tobacco Smoke Certification.	See Section IV	May be found at: *www.acf.hhs.gov/programs/ofs/forms.htm.*	By announcement closing date.

PART TWO.—APPLICATION REVIEW CRITERIA

What to submit	Required content	Required form or format ANA application review criteria This section may not exceed 40 pages	When to submit
Criteria one (10 pts)	See Section V	Introduction and Project Summary/Application Format Use the Project Abstract Form (OMB #0980–0204 exp. 10/31/2006).	By announcement closing date.
Criteria two (20 pts)	See Section V	Need for Assistance	By announcement closing date.
Criteria three (25 pts)	See Section V	Project Approach Include an Objective Work Plan form (OMB #0980–0204 exp. 10/31/2006) for each 12-month budget period. A 17-month project period requires only one OWP. **Note:** The OWP is not included in the page count for this Part.	By announcement closing date.
Criteria four (15 pts)	See Section V	Organizational Capacity	By announcement closing date.

PART TWO.—APPLICATION REVIEW CRITERIA—Continued

What to submit	Required content	Required form or format ANA application review criteria This section may not exceed 40 pages	When to submit
Criteria five (15 pts)	See Section V	Project Impact/Evaluation	By announcement closing date.
Criteria six (15 pts)	See Section V	Budget and Budget Justification/Cost Effectiveness **Note:** The Budget and Budget Justification are not included in the page count for this Part.	By announcement closing date.

PART THREE.—APPENDIX

What to submit	Required content	Required form or format This section may not exceed 20 pages	When to submit
Support Documentation	See Section V	Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers or returned to the applicant.	By announcement closing date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *www.acf.hhs.gov/programs/ofs/forms.htm.*	By announcement closing date.

4. Intergovernmental Review

Applications are not subject to Executive Order 12372.

5. Funding Restrictions

ANA does not fund:

- Activities in support of any foreseeable litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.
- ANA does not fund duplicative projects or allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on awards of grants, the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 C.F.R. 1336, Subpart C, but before funding decisions are complete (See Section I. Funding Opportunity Description—ANA Administrative Policies regarding short-term projects).
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.
- The purchase of real property or construction because these activities are not authorized by the Native American Programs Act of 1974, as amended.
- Core administration (*see* Definition) functions, or other activities, that essentially support only the applicant's ongoing administrative functions and are not related to the proposed project.
- Costs associated with fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award.
- Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village.
- Activities that are not responsive to the purpose of this Native Language Program Announcement.
- Major renovations or alterations are prohibited activities because these activities are not authorized under the Native American Programs Act of 1974 as amended. Minor alterations, as defined in this announcement, may be allowable.
- ANA will not fund activities by a consortium of tribes that duplicate activities for which a consortium member tribe also receives funding from ANA

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to: Attention: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: Attention: Tim Chappelle, U.S. Department of Health and Human Services, Office of Grants Management, Division of Discretionary Grant, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how performance indicators under economic and social development and governance projects can be monitored, evaluated and verified.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number elders participating in the activity during that reporting period.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts,

financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, *per diem*, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the

required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach

Project Approach (25 Points):

The Project Approach narrative must be clear and concise. The narrative must include a detailed project description with goals and objectives. It must discuss the project strategy and implementation plan over the project period. The applicant must use the Objective Work Plan (OWP) form to identify the project objectives, time frames, proposed activities, results and benefits expected and criteria for evaluating results and benefits, as well as the individuals responsible for completing the objectives and performing the activities. Within the results and benefits section of the OWP, the applicant must provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. In this criterion, the applicant describes how the project description, objective(s), approach, and strategy are inter-related. The applicant must also include the names and activities of any organizations, partners, consultants, or other key individuals who will contribute to the project, utilizing the OWP column for "Non-Salaried Personnel" to list the hours incurred for these activities. The applicant explains how elders and other community members are involved in the development of the language goals and strategies. The applicant must discuss any Leveraged Resources (*see* Definitions) used to strengthen and broaden the impact of the proposed project. The applicant must discuss how commitments and contributions from other entities will enhance the project. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds.

Objectives and Need for Assistance

Need for Assistance (20 Points):

Applicant must show a clear relationship between the proposed project, the strategy and community's long-range goals. The need for assistance must clearly identify the physical, economic, social, financial, governmental, and institutional challenges requiring a solution that supports the funding request. Describe the community (*see* Definitions) to be affected by the project and the community involvement in the project. The applicant must describe the community's long-range goals, and the community planning process and how the project supports these goals. The applicant must document the community's support of the proposed project. Discuss the geographic location of the project and where the project and grant will be administered. The applicant fully describes the status of Native American language(s) in the community. Since obtaining this data may be part of the proposed project being reviewed, applicants can meet this requirement by explaining their current language status and providing a detailed description of any circumstances or barriers, which have prevented the collection of community language data. If documentation exists, describe it in terms of current language status. Applicants must discuss and present objectives and activities to be achieved and evaluated at the end of the project period. Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy.

The applicant must provide documentation of the community's support for the proposed project. Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, identify the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based project delivery strategy. National and Regional organizations must also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Proposed project

objectives support the identified need and must be measurable.

Budget and Budget Justification

Budget and Budget Justification/Cost Effectiveness (15 Points):

An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share and cite source(s) of funding. The applicant must provide a detailed line-item Federal and non-Federal share budget by year for each year of project funds requested. A budget justification narrative to support the line-item budget must be included for each year of project funds requested. The budget request must include a line-item justification for each Object Class Category listed under Section B—"Budget Categories" on SF 424 "Budget Information-Non Construction Programs" form. The line-item budget and budget justification narrative must include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

The non-Federal budget share must identify the source and be supported by letters of commitment (*see* Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization or individual will support a project. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters, as they do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a copy of its current Indirect Cost Rate Agreement must be included in the application, with all costs broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement, may not be able to claim the allowable cost, may have the grant award amount reduced, or may experience a delay in grant award.

Applicants are strongly encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one ANA post-award grant training and technical assistance workshop. This expenditure is allowable for new grant recipients and optional for grantees that have had previous ANA grant awards. Applicants may also include costs for two staff persons to attend the ACF National Native American Conference.

Cost Effectiveness: This section of the criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving the preservation of Native American languages. Applicants demonstrate this by: summarizing partnerships and the efficient use of leveraged resources; explaining the impact on the identified community through measurable project outcomes, and presenting a project that is completed, self-sustaining or supported by other than ANA funds by the end of the project period.

Organizational Profiles

Organizational Capacity (15 Points):

In this criterion, the application provides information on the management structure of the applicant and the organizational relationships with its cooperating partners. Include an organizational chart that indicates where the proposed project will fit in the existing structure. Demonstrate experience in the program area. Describe the administrative structure, and the applicant's ability to administer and implement a project of the proposed scope. If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application. Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds.

Applicants must list all current sources of Federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues must be discussed in this criterion.

Applicants must provide "staffing and position data" to include a proposed staffing pattern for the project where the applicant highlights the new project staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Applicants must provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff. Full position descriptions are required to be submitted and included in the Appendix. Applicants must explain how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals must be included. Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant.

If applicable, applicant must identify consortium membership. The consortium applicant must be the recipient of the funds. A consortium applicant must be an "eligible entity" as defined by this Program Announcement and the ANA regulations. Consortium applicants must include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortium members supporting the ANA application. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member Tribes also receive funding from ANA. The consortium application must identify the role and responsibility of each participating consortium member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

Results or Benefits Expected

Project Impact/Evaluation (15 Points):

In this criterion, the applicant will discuss the "Impact Indicators" (see Definitions) and the benefits expected as a result of this project. Impact indicators identify qualitative and quantitative data directly associated with the project. Each applicant must submit five impact indicators to support the applicant's project. Two of the five are standard and required across all ANA programs. For each impact indicator submitted the applicant must discuss the relevance of the impact indicator to the project, the method used to track the indicator, and the method used to determine project success. Impact indicators will be reported to ANA in the grantee's quarterly report. The applicant must indicate a target number to be achieved for the required standard impact indicators. In addition to the two standard required impact indicators, an applicant must also submit three additional impact indicators. These three impact indicators may be selected from the suggested list below, or they

may be developed for the specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and project specific indicators. The two standard required impact indicators are: (a) Number of partnerships formed; and (b) amount of dollars leveraged beyond the required NFS match. The ANA suggested impact indicators are: (1) Number of surveys completed; (2) percent and number of community members assessed; (3) the rate of language loss or gain; (4) the number of elders consulted; (5) number of language experts consulted; (6) number of community goals developed to preserve the Native language or (7) number of infrastructure and administrative systems, including policies and procedures developed and implemented. The applicant should discuss the projects value and long-term impact to the participants and the community and explain how the information relates to the proposed project goals, objectives and outcomes. The applicant should discuss how the project will be completed, self-sustaining, or supported by other than ANA funds at the end of the project period. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period or quarter (if applicable). Project outcomes should support the identified need and should be measurable and quantifiable.

Introduction—Project Summary/ Abstract

Introduction and Project Summary/ Application Format (10 Points):

Introduction and Project Summary: Using the ANA Project Abstract form (OMB Control Number 0980–0204, exp 10/31/2006), the applicant must include: the name of the applicant, the project title, the Federal amount requested, the amount of matching funds to be provided, length of time required to accomplish the project, the goal of the project, a list of the project objectives (not activities), the estimated number of people to be served, and the expected outcomes of the project.

In addition to the Project Abstract form, the applicant will provide an introductory summary narrative that includes: An overview of the project, a description of the community to be served, the location of the identified community, a declarative statement identifying the need for the project, and a brief overview of the project objectives, strategy and community or organizational impact.

Application Format: Applicants are required to submit applications in a standard format, following the ANA requirements on application length, font, numbering, line spacing, etc. Please refer to Section IV Part 2, "Content and Form of Application Submission" for detailed formatting instructions.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial Screening: Each application submitted under an ANA program announcement will undergo a pre-review screening to determine (a) timeliness—the application was received by 4:30 p.m. eastern time on the closing date; (b) the Federal request does not exceed the upper value of the dollar range specified; (c) the applicant has submitted a current dated and signed resolution from the governing body; and, (d) if the applicant is not a Tribe or Alaska Native Village government, the applicant has submitted proof a majority of the board of directors is representative of the community to be served. An application that does not meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants, with incomplete applications, will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. The notification will include the reviewer comments. Applicants are not ranked based on general financial need. Applicants who are initially excluded from competition because of ineligibility may appeal the Agency's decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

Competitive Review Process: Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by an independent peer review panel on the basis of the ANA Evaluation Criteria. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability of ANA to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria standardizes the review of each application and distributes the number of points more equitably. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. A determination will be made as to whether the project is an effective use of Federal funds.

Application Review Criteria: Applicants will be reviewed based on the following criteria: ANA's criteria categories are Introduction and Project Summary/Application Format; Need for Assistance; Project Approach; Organizational Capacity; Project Impact/ Evaluation; and Budget and Budget Narrative/Cost Effectiveness.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and recommendations; an analysis by ANA staff and review of previous ANA grantee's past performance; comments from State and Federal agencies having contract and grant performance related information and other interested parties and geographic distribution. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

Approved But Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

3. Anticipated Announcement and Award Dates

Approximately 120 days after the application due date, the successful applicants will be notified by mail through the issuance of a Financial Assistance Award document which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and sent to the applicant's Authorizing Official. Applications not funded in this competition will be notified in writing.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR part 74.

45 CFR part 92.

45 CFR part 1336, subpart C and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974.

3. Reporting Requirements

Programmatic Reports: Quarterly.

Financial Reports: Quarterly.

Special Reporting Requirements: An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial Status Reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final SF 269 report shall be due 90 days after the end of the project period.

VII. Agency Contacts

Program Office Contact:

ANA Applicant Help Desk, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor-West, Washington, DC 20447–0002. Phone: 1–877–922–9262. E-mail: *ana@acf.hhs.gov*.

Grants Management Office Contact:

Tim Chappelle, ACF, Office of Grants Management, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor-West, Washington, DC 20447–0002. Phone: 202–401–2344. E-mail: *tichappelle@acf.hhs.gov*.

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive free T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants must check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262. ANA strongly encourages all prospective applicants to participate in free pre-application training. For regional T/TA provider contact information, please refer to Section IV.

Applicants will not be sent acknowledgement of received applications.

Priority Area 2

Native Language Preservation and Maintenance: Category II: Design and/or Implementation Grants

Description: The purposes of Design and/or Implementation Grants are so Tribes or Native communities may design and/or implement a language program to achieve their long-range goal(s) and to accommodate the Tribe or Native community in reaching their long-term language goal(s). Program Areas of Interest under Category II include:

- Projects that produce culturally relevant printed stories for children on mental and physical disabilities using the Native language of the community.
- Establish and/or support of a community language project to bring older and younger Native Americans together to facilitate and encourage the teaching of Native American language skills from one generation to another;
- Establish and/or support training projects to teach Native American languages or to serve as interpreters or translators of Native languages;
- Projects that develop, print, and/or disseminate materials to be used for the teaching and enhancement of Native American languages;
- Projects that implement an immersion model, mentor, or incorporate distance learning for the teaching of the Native language.
- Projects to distribute or broadcast Native languages;
- Establish and/or support training projects to produce or participate in, television, radio or other media forms, to be broadcast in Native American languages;
- Projects that compile, transcribe and perform analysis of oral testimony in order to record and preserve the language; and,
- Projects that purchase specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $1,000,000.

Anticipated Number of Awards: 10–20.

Ceiling on Amount of Individual Awards Per Budget Period: $175,000.

Floor on Amount of Individual Awards Per Budget Period: $25,000.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Average Projected Award Amount: $100,000.

Length of Project Periods: 12 month project and budget period. 17 project and budget period. 24 month project and two budget periods. 36 month project and three budget periods.

III. Eligibility Information

1. Eligible Applicants

Native American tribal governments (federally recognized).

Native American tribal organizations (other than federally recognized tribal governments).

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education. Others (*see* Additional Information on Eligibility below).

Additional Information on Eligibility

- Federally recognized Indian tribes;
- Consortia of Indian tribes;

- Incorporated non-federally recognized tribes.
- Incorporated non-profit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National and regional incorporated non-profit Native American organizations with Native American community-specific objectives;
- Alaska Native Villages, as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or non-profit village consortia;
- Incorporated non-profit Alaska Native multi-purpose community-based organizations;
- Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Non-profit Native organizations in Alaska with village specific projects;
- Public and non-profit private agencies serving Native Hawaiians;
- Public and non-profit private agencies serving Native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands (the populations served may be located on these islands or in the United States);
- Tribally controlled Community Colleges, tribally controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands which serve Native Pacific Islanders; and
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs.

Please refer to Section I. Funding Opportunity Description to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

2. Cost Sharing/Matching

Yes.

Matching/Cost-Sharing

Grantees are required to meet a non-Federal share of the project costs, in accordance with 42 U.S.C. 2991(b)(3)(e)(1). Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting *$100,000* in Federal funds (based on an award of *$100,000* per budget period) must provide a match of at least *$25,000* (*20%* of the total approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal dollars. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

3. Other

All Applicants must have a Dun & Bradstreet Number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Disqualification Factors

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applications that exceed the ceiling amount will be considered incomplete and will not be considered for competition.

Applications that do not include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period will be considered non-responsive and will not be considered for competition.

If applicant is not a tribe or Alaska Native Village government, applications that do not include proof a majority of the governing board of directors is representative of the community to be served, will be considered non-responsive and will not be considered for competition (*see* Section I. Funding Opportunity Description-Definitions, for information on resolutions).

Please see Section III.2 Other, concerning requirements for the cost matching which do not impact the responsiveness of an application for competitive review.

IV. Application and Submission Information

1. Address To Request Application Package

To learn more about ANA and receive information about Training and Technical Assistance (T/TA) contact the regional T/TA providers at:

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV
Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, VA 22101. Phone: 888–221–9686. Fax: 703–821–368. E-mail: *kking@namsinc.org*. URL: *http://www.anaeastern.org*.

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY
ACKCO, Inc., 1326 N. Central, Suite 208, Phoenix, Arizona 85004. Toll-Free: 800–525–2859; Direct: 602–

253–9211; Fax 602–253–9135. Theron Wauneka, Project Manager. E-mail: *theron.wauneka@ackco.com.* URL: *http://www.anawestern.org.*

Region III: Alaska. Native American Management Services, Inc., 11723 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577. Toll-Free 877–770–6230; Direct: 907–694–5711; Fax 907–694–5775. P.J. Bell, Project Manager. E-mail: *region 3@gci.net.* URL: *http://www.anaalaska.org.*

Region IV: American Samoa (AS), Guam, HI, Commonwealth of Northern Mariana Islands (CNMI) Council for Native Hawaiian Advancement, 33 South King Street, Suite 513, Honolulu, Hawaii 96813. Toll-Free 800–709–2642; Local 808–521–5011; Fax: 808–521–4111. Lilia Kapuniai, Vice President, Community-Development. E-mail: *info@anapacific.org.* URL: *http://www.anapacific.org.*

2. Content and Form of Application Submission

Please refer to Section I, Funding Opportunity Description to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

Application Submission: Each application should include one signed original and two additional copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, an original signature by an authorized representative, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. A complete application for assistance under this Program Announcement consists of three Parts. Part One is the SF 424, Required Government Forms, and other required documentation. Part Two of the application is the project substance of the application. This section of the application may not exceed 40 pages. The line-item budgets, budget justifications and the OWP form (OMB Control Number 0980–0204, exp 10/31/2006) will be exempt from the page limitation. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20 page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

Electronic Submission: While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that have not yet received clearance from Grants.gov. While electronic submission of applications may be available in the next fiscal year for this program, no electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two, and Part Three requirements. The application must begin with the information requested in Part One. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format will reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

ANA Application Format: ANA requires all applications to be labeled in compliance with the format provided in this program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including Government Forms, certifications and assurances) must be numbered consecutively (for example, the first page of the application is the SF 424 and must be labeled as page one). The paper size shall be 8½ x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. (Note: the 1.5 line spacing does not apply to the Project Abstract Form, Appendices, the Table of Contents, the Objective Work Plans, and the Budget.) The font size shall be 12-point and the font type shall be Times New Roman.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information-Non-Construction Programs; SF–424B, Assurances-Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.* Please see

Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date: April 1, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications.

ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

What to submit	Required content	Required form or format	When to submit
Table of Contents	See Section IV	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By announcement closing date.
SF424	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By announcement closing date.
SF424A	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By announcement closing date
SF424B	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By announcement closing date.
Grant Application Data Summary (GADS) form Native Language.	See Section I	ANA Form: OMB # 0970–0263 exp. 3/31/07 *http://www.acf.hhs.gov/programs/ana* (Go to Forms link to obtain the document).	By announcement closing date.
Proof of Non-Profit Status	See Section III	As described in this announcement under Section III "Additional Information on Eligibility".	By announcement closing date.
Resolution	See Section I	As described in this announcement under Section I "Definitions".	By announcement closing date.
Board of Directors Documentation.	See Section I	As described in this announcement under Section I "ANA Administrative Policies".	By announcement closing date.
Audit Letter	See Section I	A Certified Public Accountant's "Independent Auditors' Report on Financial Statement." This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $500,000 or more of federal funds). Applicant must also include only that portion of the audit document titled "Supplemental Schedule of Expenditures of Federal Awards".	By announcement closing date.
Indirect Cost Agreement	See Section V	Organizations and Tribes must submit a current indirect cost agreement (if claiming in-direct costs) that aligns with the approved ANA project period. The In-direct Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By announcement closing date
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	See Section III	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) (3) of the Native American Program regulations. (if applicable).	By announcement closing date.
Certification regarding Maintenance of Effort.	See Section I	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By announcement closing date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	See Section IV	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By announcement closing date.
Environmental Tobacco Smoke Certification.	See Section IV	May be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By announcement closing date.

PART TWO.—APPLICATION REVIEW CRITERIA

What to submit	Required content	Required form or format ANA application review criteria, This section may not exceed 40 pages	When to submit
Criteria One (10 pts)	See Section V	Introduction and Project Summary/Application Format. Use the ANA Abstract form (OMB#.	By announcement closing date.
Criteria Two (20 pts)	See Section V	Need for Assistance	By announcement closing date.
Criteria Three (25 pts)	See Section V	Project Approach Include an Objective Work Plan (OWP) form (OMB# 0980–0204) for each 12-month project period. A 17-month project period requires only one OWP. Note: The OWP is not included in the page count for this Part.	By announcement closing date.
Criteria Four (15 pts)	See Section V	Organizational Capacity	By announcement closing date.
Criteria Five (15 pts)	See Section V	Project Impact/Evaluation	By announcement closing date.
Criteria Six (15 pts)	See Section V	Budget and Budget Justification/Cost Effectiveness **Note:** The Budget and Budget Justification are not included in the page count for this Part.	By announcement closing date.

PART THREE.—APPENDIX

What to submit	Required content	Required form or format, this section may not exceed 20 pages	When to submit
Support Documentation	See Section V	Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers or returned to the applicant.	By announcement closing date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *http://www.acf.hhs.gov/programs/cfs/forms.htm.*	By announcement closing date.

4. Intergovernmental Review

Applications are not subject to Executive Order 12372.

5. Funding Restrictions

ANA does not fund:

- Activities in support of any foreseeable litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.
- ANA does not fund duplicative projects or allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on awards of grants, the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 C.F.R. 1336, Subpart C, but before funding decisions are complete (*see* Section I. Funding Opportunity Description-ANA Administrative Policies regarding short-term projects).
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.
- The purchase of real property or construction because these activities are not authorized by the Native American Programs Act of 1974, as amended.

• Core administration (*see* Definition) functions, or other activities, that essentially support only the applicant's ongoing administrative functions and are not related to the proposed project.

• Costs associated with fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award.

• Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village.

• Activities that are not responsive to the purpose of this Native Language Program Announcement.

• Major renovations or alterations are prohibited activities because these activities are not authorized under the Native American Programs Act of 1974 as amended. Minor alterations, as defined in this announcement, may be allowable.

• ANA will not fund activities by a consortium of tribes that duplicate activities for which a consortium member tribe also receives funding from ANA

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date.

Applications should be mailed to: Attention: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: Attention: Tim Chappelle, U.S. Department of Health and Human Services, Office of Grants Management, Division of Discretionary Grant, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how performance indicators under economic and social development and governance projects can be monitored, evaluated and verified.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms

as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number of elders participating in the activity during that reporting period.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, *per diem*, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach

Project Approach (25 Points):

The Project Approach narrative must be clear and concise. The narrative must include a detailed project description with goals and objectives. It must discuss the project strategy and implementation plan over the project period. The applicant must use the Objective Work Plan (OWP) form to identify the project objectives, time frames, proposed activities, results and benefits expected and criteria for evaluating results and benefits, as well as the individuals responsible for completing the objectives and performing the activities. Within the results and benefits section of the OWP, the applicant must provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. In this criterion, the applicant must summarize how the project description, objective(s), approach and strategy are inter-related. The applicant must also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project, utilizing the column for Non-Salaried Personnel to list the hours incurred for these activities. The applicant explains how elders and other community members are involved in the development of the language goals and strategy.

The applicant must discuss the leveraged resources (*see* Definitions) used to strengthen and broaden the impact of the proposed project. The Applicant must discuss how commitments and contributions from other entities will enhance the project. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds. Provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds.

The application includes the following three plans: (1) "Evaluation Plan" with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (*e.g.*, an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives. (2) "Sharing Plan" that identifies how the project's methodology, research data, outcomes or other products can be shared and modified for use by other Tribes or communities. If this is not feasible or culturally appropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and the continuing vitality of

Native languages. (3) "Preservation Plan" to preserve project products describes how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations. Native Language projects that produce audio or print media will now include a stipulation that a copy of the product(s) will be provided to ANA for the Language Repository. Federally-recognized Tribes have the option to not submit projects.

Objectives and Need for Assistance

Need for Assistance (20 Points):

Applicant must show a clear relationship between the proposed project, the strategy and community's long-range goals. The need for assistance must clearly identify the physical, economic, social, financial, governmental, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the community (*see* Definitions) to be affected by the project and the community involvement in the project. The Applicant must describe the community's long-range goals, and the community planning process and how the project supports these goals. Discuss the geographic location of the project and where the project and grant will be administered.

Category II applicants must be able to document: That language information has been collected and analyzed, and the community has established long-range language goals. The application fully describes the current status of the Native American language to be addressed; current status is defined as data compiled within the previous 36 months. The description of the current status minimally includes the following information:

- Number of speakers.
- Age of speakers.
- Gender of speakers.
- Level(s) of fluency.
- Number of first language speakers (Native language as the first language acquired).
- Number of second language speakers (Native language as the second language acquired).
- Where Native language is used (*e.g.* home, court system, religious ceremonies; church, media, school, governance and cultural activities).
- Source of data (formal and/or informal).
- Rate of language loss or gain.

The applicant fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. The applicant must include the following: if the applicant had a community language or language training program within the last 36 months? Within the last 10 years? If so, fully describe the program(s), and include the following: (1) Program goals; (2) number of program participants; (3) number of speakers; (4) age range of participants (*e.g.*,, 0–5, 6–10, 11–18, etc.); (5) number of language teachers; (6) criteria used to acknowledge competency of language teachers; (7) resources available to the applicant (*e.g.*, valid grammars, dictionaries, and orthographies or describe other suitable resources); and, (8) program achievements.

If applicant has never had a language program, a detailed explanation of what barriers or circumstances prevented the establishment of a community language program must be included. The application describes the proposed project's long-range goals and strategies, including: (1) How the specific Native American long-range community goal(s) relate to the proposed project. (2) How the goal(s) fit within the context of the current language status. (3) A clearly delineated strategy to assist in assuring the survival and continued vitality of the Native American languages addressed in the community. (4) The application explains how the community and the tribal government (where one exists) intend to achieve these goals. (5) All tribes and communities, however, must indicate in their application how they intend to involve elders and other community members in development of language goals and strategies, and in evaluation of project outcomes. The applicant must provide documentation of the community's support for the proposed project. The type of community served will determine the type of documentation necessary to demonstrate participation.

Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, identify the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based project delivery strategy. National and Regional organizations must also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Proposed project objectives support the identified need and must be measurable.

Budget and Budget Justification

Budget and Budget Justification/Cost Effectiveness (15 Points):

An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share and cite source(s) of funding. The applicant must provide a detailed line-item Federal and non-Federal share budget by year for each year of project funds requested. A budget justification narrative to support the line-item budget request must be included for each year of project funds requested. The budget must include a line-item justification for each Object Class Category listed under Section B—"Budget Categories" of the "Budget Information-Non Construction Programs" on the SF 424A form. The line-item budget and budget justification narrative must include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

The non-Federal budget share must identify the source and be supported by letters of commitment (*see* Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization or individual will support a project. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters, as they do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a copy of its current Indirect Cost Rate Agreement must be included in the application, with all cost broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement, may not be able to claim the allowable cost, may have the grant award amount reduced, or may experience a delay in grant award.

Applicants are strongly encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one ANA post-award grant training and technical assistance workshop. This expenditure is

allowable for new grant recipients and optional for grantees that have had previous ANA grant awards, and will be negotiated upon award. Applicants may also include costs for two staff persons to attend the ACF National Native American conference.

Cost Effectiveness: This section of the criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving the preservation of Native American languages. Applicants demonstrate this by: summarizing partnerships and the efficient use of leveraged resources; explaining the impact on the identified community through measurable project outcomes, and presenting a project that is completed, self-sustaining or supported by other than ANA funds by the end of the project period.

Organizational Profile

Organizational Capacity (15 Points): Provide information on the management structure of the Applicant and the organizational relationships with its cooperating partners. Include organizational charts that indicate how the proposed project will fit in the existing structure. Demonstrate experience in the program area. Describe the applicant's capabilities such as the administrative structure, and its ability to administer a project of the proposed scope. If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application. Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds.

Applicants must list all current sources of Federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues must be discussed in this criterion.

Applicants must provide "staffing and position data" to include a proposed staffing pattern for the project where the applicant highlights the new project staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Applicant must provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff Full position descriptions are required to be submitted and included in the Appendix. Applicant must explain how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals must be included. Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant.

If applicable, applicant must identify consortium membership. The consortium applicant must be the recipient of the funds. A consortium applicant must be an "eligible entity" as defined by this Program Announcement and the ANA regulations. Consortium applicants must include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortium members supporting the ANA application. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA. The consortium application must identify the role and responsibility of each participating consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

Results or Benefits Expected

Project Impact/Evaluation (15 Points): In this criterion, the applicant will discuss the "Impact Indicators" (see Definitions) and the benefits expected as a result of this project. Impact indicators identify qualitative and quantitative data directly associated with the project. Each applicant must submit five impact indicators to support the applicant's project. Two of the five are standard and required across all ANA programs. For each impact indicator submitted the applicant must discuss the relevance of the impact indicator to the project, the method used to track the indicator; and the method used to determine project success. Impact indicators will be reported to ANA in the grantee's quarterly report. The applicant must indicate a target number to be achieved for the required standard impact indicators. In addition to the standard required impact indicators, an applicant must also submit three additional impact indicators. These three impact indicators may be selected from the suggested ANA list below, or they may be developed for the specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and project specific indicators. The two standard required impact indicators are: (a) Number of partnerships formed; and (b) amount of dollars leveraged beyond the required NFS match. The ANA suggested impact indicators are: (1) The number of people involved in establishment or operation of project; (2) number of training classes or workshops held to teach language; (3) number and type of materials developed; (4) number of media products developed; (5) number of translations achieved; (6) number of individuals who increased in ability to speak the language; (7) number of participants who achieve fluency; (8) number of settings the language is spoken in; or (9) number of infrastructure and administrative systems, including policies and procedures developed and implemented.

The applicant should discuss the projects value and long-tem impact to the participants and the community and explain how the information relates to the proposed project goals, objectives and outcomes. The applicant should discuss how the project will be completed, self-sustaining, or supported by other than ANA funds at the end of the project period. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period or quarter (if applicable). Project outcomes should support the identified need and should be measurable and quantifiable.

Introduction—Project Summary/ Abstract

Introduction and Project Summary/ Application Format (10 Points):

Introduction and Project Summary: Using the ANA Project Abstract form (OMB Control Number 0980–0204, Exp. 10/31/2006), the applicant must include: the name of the applicant, the project title, the Federal amount requested, the amount of matching funds to be provided, length of time required to accomplish the project, the goal of the project, a list of the project objectives (not activities), the estimated number of people to be served and the expected outcomes of the project.

In addition to the Project Abstract form, the applicant will provide an introductory summary narrative that includes: an overview of the project, a description of the community to be served, the location of the identified community, a declarative statement identifying the need for the project, and a brief overview of the project's objectives, strategy and community or organizational impact.

Application Format: Applicants are required to submit applications in a standard format, following the ANA requirements on application length, font, numbering, line spacing, etc. Please refer to Section IV.2. Content and Form of Application Submission, for detailed formatting instructions.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial Screening: Each application submitted under this ANA program announcement will undergo a pre-review screening to determine: (a) Timeliness—the application was received by 4:30 p.m. eastern time on the closing date; (b) the Federal request does not exceed the upper value of the dollar range specified; (c) the applicant has submitted a current signed and dated resolution from the governing body; and (d) if the applicant is not a tribe or Alaska Native village government, the applicant has submitted proof a majority of the board of directors is representative of the community to be served. An application that does not meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants with an incomplete application will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made funding decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. The notification will include the reviewer comments. Applicants are not ranked based on general financial need. Applicants who are initially excluded from competition because of ineligibility may appeal the Agency's decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

Competitive Review Process: Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the Evaluation Criteria. The evaluation criteria are designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability of ANA to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria standardizes the review of each application and distributes the number of points more equitably. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. A determination will be made as to whether the proposed project is an effective use of Federal funds.

Application Review Criteria: Applicants will be reviewed based on the following criteria and points: ANA's six criteria categories are Introduction and Project Summary/Application Format; Need for Assistance; Project Approach; Organizational Capacity; Project Impact/Evaluation; and Budget and Budget Narrative/Cost Effectiveness.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, the panel review scores; an analysis by the ANA staff, review of previous ANA grant past performance; comments from State and Federal agencies having contract and grant performance related information, other interested parties and geographic distribution. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

Approved but Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

3. Anticipated Announcement and Award Dates

Approximately 120 days after the application due date, the successful applicants will be notified by mail through the issuance of a Financial Assistance Award document which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and sent to the applicant's Authorizing Official. Applications not funded in this competition will be notified in writing.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR part 74
45 CFR part 92
45 CFR part 1336, subpart C and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974

3. Reporting Requirements

Programmatic Reports: Quarterly.
Financial Reports: Quarterly.
Special Reporting Requirements: An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial

Status Reports are submitted 30 days after each quarter (3-month intervals) of each budget period. The final SF 269 report shall be due 90 days after the end of the project period.

VII. Agency Contacts

Program Office Contact:
ANA Applicant Help Desk, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor—West, Washington, DC 20447–0002. Phone: 1–877–922–9262. E-mail: *ana@acf.dhhs.gov.*

Grants Management Office Contact:
Tim Chappelle, ACF, Office of Grants Management, 370 L'Enfant Promenade, SW., Aerospace Building 8th Floor—West, Washington, DC 20447–0002. Phone: 202–401–2344. E-mail: *tichappelle@acf.hhs.gov.*

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive free T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants must check ANA's web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262. ANA strongly encourages all prospective applicants to participate in free pre-application training. For regional T/TA provider contact information, please refer to Section IV.

Applicants will not be sent acknowledgement of received applications.

Dated: January 26, 2005.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 05–1899 Filed 2–2–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans (ANA); FY 2005 for New Community-Based Projects

Funding Opportunity Title: Social and Economic Development Strategies for Native Americans.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ANA–NA–0003.

CFDA Number: 93.612.

Due Date for Applications: April 19, 2005.

Executive Summary: The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of fiscal year (FY) 2005 funds for new community-based projects under ANA's Social and Economic Development Strategies (SEDS) for Native Americans program. ANA's FY 2005 SEDS goals and areas of interest are focused on strengthening children, families, and communities through community-based organizations, tribes, and Village governments.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed in this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities.

Financial assistance under the SEDS program is provided utilizing a competitive process in accordance with the Native American Programs Act of 1974, as amended. The purpose of this Act is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, Alaskan Natives, and other Native American Pacific Islanders, including American Samoa natives.

I. Funding Opportunity Description

This program announcement emphasizes community-based partnerships and projects. This emphasis will increase the number of grants to local community organizations and expand the number of partnerships among locally based non-profit organizations.

In support of the Presidential Executive Orders on Asian American and Pacific Islanders, Community-based Alternatives for Individuals with Disabilities, and Faith-based and Community Organizations, ANA encourages Native communities to address the needs of people with disabilities, and invites eligible faith-based and community organizations to apply.

This program announcement will emphasize community-based, locally designed projects. This emphasis will increase the number of grants to local community organizations and expand the number of partnerships among locally based non-profit organizations. ANA will accept applications from multiple organizations in the same geographic area. Although tribes are limited to three simultaneous ANA grants (one each under SEDS, Language and Environmental programs) at any one time, this clarification allows other community-based organizations to apply for ANA funding, provided the objectives and activities do not duplicate currently funded projects serving the same geographic area.

The ANA SEDS Programs support the fundamental principle that economic development, social development and governance are interrelated, and that with effective economic, social and governance policies and development strategies, Native American people and communities can achieve self-sufficiency. In order to move toward self-sufficiency, development in one area should be balanced with the development in the others. Accordingly, community-based economic, social and governance development programs and activities proposed in response to this announcement must take into consideration the elements necessary to build healthy self-sufficient communities.

ANA's Program Announcements are goal-category specific. ANA will release separate program announcements for funding opportunities under SEDS, for Language Preservation and Maintenance, Environmental Regulatory Enhancement, and for special initiatives.

ANA's policy is based on three interrelated goals: (1) Economic Development: To foster the development of stable diversified local economies and economic activities that provide jobs, options and opportunities that promote economic well-being in Native American communities. (2) Social Development: To support local access to, control of, and coordination with, programs and services that safeguard the health, well-being, and culture of native peoples and (3) Governance: To assist Tribes and Alaska Native village governments to build capacity that results in local control and decision-making over their resources.

The Administration for Children and Families through the Administration for Native Americans supports and fosters strong Native American families and healthy communities under three initiatives. (1) Projects that support rural communities; (2) projects that provide prevention and intervention programs for youth and families; and (3) projects that promote healthy relationships to strengthen families in concert with ACF's goals and objectives. Eligible community and faith-based organizations are invited to submit applications that provide services directly to Native American people.

ANA's FY 2005 program goals and areas of interest are focused on expanding community-based, culturally appropriate economic development,

social development and governance activities. ANA is interested in projects designed to grow Native American economies, strengthen Native families, and decrease the high rate of social challenges caused by the lack of community-based business, social, and economic infrastructure. In response to this announcement, ANA encourages Native American tribes and organizational leaders to propose, coordinate and implement community-based projects to meet the needs of its community and develop options and opportunities for future generations.

ANA Administrative Policies:

Applicants must comply with the following ANA Administrative Policies:

- An applicant must provide a 20% non-Federal match of the approved project costs. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a), under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions).
- An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body.
- A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit organization can accomplish this by providing one of the following verifiable documents: (i) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or (ii) a copy of the currently valid IRS tax exemption certificate; or (iii) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals; or (iv) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (v) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determination of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA eligibility.
- If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. Applicants must provide information that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community be to served.
- Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy.
- ANA will review proposed projects to ensure applicants have considered all resources available to the community to support the project.
- Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community.
- All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to ANA on all materials developed using ANA funds.
- ANA will not accept applications from tribal components that are tribally authorized divisions unless the ANA application includes a tribal resolution.
- ANA will only accept one application per eligible entity. The first application received by ANA shall be the application considered for competition unless ANA is notified in writing which application should be considered for competitive review.
- An applicant can have only one active ANA SEDS grant operating at any given time.
- ANA funds short-term projects not programs. Projects must have definitive goals and objectives that will be achieved by the end of the project period. All projects funded by ANA must be complete, self-sustaining, or supported by other than ANA funding at the end of the project period.
- Before funding the second or third year of a multi-year grant, ANA will require verification and support documentation from the grantee that objectives and outcomes proposed in the preceding year were accomplished, and the non-Federal share requirement has been met.
- ANA reviews the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the Objective Work Plan (OWP).
- Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, and discuss the community-based delivery strategy of the project, identify and describe the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based delivery system. National and Regional organizations must describe their membership, define how the organization operates, and demonstrate native community and/or Tribal government support for the project. The type of community to be served will determine the type of documentation necessary to support the project.
- Applicants proposing an Economic Development project must address the project's viability. A business plan, if applicable, must be included to describe the project's feasibility, cash flow, and approach for the implementation and marketing of the business.

Definitions

Program specific terms and concepts are defined and must be used as a guide in writing and submitting the proposed project. The funding for allowable projects in this program announcement is based on the following definitions:

Authorized Representative: The person or person(s) authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies.

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information must be provided: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe.

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved

during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community.

Completed Project: A project funded by ANA is finished, self-sustaining, or funded by other than ANA funds, and the results and outcomes are achieved by the end of the project period.

Consortium-Tribal/Village: A group of Tribes or Villages that join together either for long-term purposes or for the purpose of an ANA project.

Construction: The initial building of a facility.

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes unrelated to the actual management or implementation of the ANA project.

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural capacities necessary for a sustainable local community. Economic development includes activities and actions that develop sustainable, stable, and diversified private sector local economies. For example, initiatives that support employment options, business opportunities, development and formation of a community's economic infrastructure, laws and policies that result in the creation of businesses and employment options, and opportunities that provide for the foundation of healthy communities and strong families.

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Governance: Involves assistance to Tribal and Alaska Native village governments to increase their ability to exercise local control and decision-making over their resources.

Impact Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be quantifiable, measurable, verifiable and related to the outcome of the project to determine that the project has achieved its desired objective and can be independently verified through ANA monitoring and evaluation.

In-kind Contributions: In-kind contributions are property or services that benefit a federally assisted project which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed in-kind match must meet the applicable requirements found in 45 CFR parts 74 and 92.

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. Statements in an application about resources which have been committed to or support a proposed ANA project, but not supported with documentation, will be disregarded.

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-Federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a letter from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project.

Minor Renovation or Alteration: Work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Minor alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and major renovations. A minor alteration and or renovation must be incidental and essential for the project ("incidental" meaning the total alteration and renovation budget must not exceed the lesser of $150,000 or 25 percent of total direct costs approved for the entire project period).

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as day care, education, and training.

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months and up to 24 or 36 months to complete. A multi-year project affords the applicant an opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three-year period.

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. Objectives are an important component of Criterion III and are the foundation for the Objective Work Plans.

Objective Work Plan (OWP): The project plan the applicant will use in meeting the results and benefits expected for the project. The results and benefits are directly related to the Impact Indicators. The OWP provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed in the Objective Work Plan. ANA will require separate OWPs for each year of the project (Form OMB# 0980–0204 exp 10/31/2006).

Partnerships: Agreements between two or more parties that will support the development and implementation of the proposed project. Partnerships include other community-based organizations or associations, Tribes, Federal and State agencies, and private or non-profit organizations.

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Resolution: Applicants are required to include a current signed and dated

Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution must indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any eligible matching funds (if applicable).

Sustainable Project: A sustainable project is an ongoing program or service that can be maintained without additional ANA funds.

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self-sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well-being, and culture of the people that reside and work in the community.

Social Development: Investment in human and social capital for advancing the well-being of members of the Native American community served. Social development is the action taken to support the health, education, culture, and employment options that expand an individual's capabilities and opportunities, and that promote social inclusion and combat social ills.

Total Approved Project Costs: The sum of the Federal request plus the non-Federal share.

Please note that this announcement is divided into two program areas. The first program area is Social and Economic Development Strategies and the second program area is Social and Economic Development Strategies—Alaska. The second program area information immediately follows Section VIII of program area one. Applications from Alaska Native entities may be submitted under either SEDS or Alaska SEDS but not both program areas. The SF 424 must clearly indicate the correct program area.

Priority Area 1

Social and Economic Development Strategies for Native Americans

Description: To promote the goal of social and economic self-sufficiency for Native Americans.

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural components necessary for a sustainable local community. Applicants are encouraged to develop sustainable projects to support sustainable, stable, and diversified private sector local economies. Program Areas of Interest include:

- Projects to strengthen an organization's capacity to deliver business technical assistance, workshops, and financial literacy programs that create, expand, and retain public and private sector community-based businesses.
- Projects to increase cooperative enterprise development activities, and technical capacity of youth to establish and operate cooperative businesses with the goal of teaching financial, management and long-term employment skills.
- Projects to plan and coordinate emergency response services within the community and with State and local governments to protect against Acts of Nature and other catastrophic events such as fire, floods, and environmental catastrophes.
- Projects to implement initiatives that are based on a feasibility study that assessed the economic potential of energy resources in their community, including renewable energy sources such as: Bio-energy, Geothermal, Hydrogen, Hydropower, Ocean, Solar, Wind, or other methods appropriate to the tribe and geographical location.
- Projects to develop community transportation activities that support the needs of the elderly, the disabled, and the local workforce.
- Projects to develop organizational and management capacity building activities that enhance community-based program delivery systems and services.
- Projects to develop and implement community-based activities that increase international tourism and trade activities for Native American products, services, and communities. Business sectors of interest include: the export of Native American packaged foods; arts and crafts; literature and music; manufactured products; agricultural and organic products; value-added product assembly or processing that includes agriculture and aquaculture.
- Projects to develop and enhance subsistence activities that retain, or re-establish Native traditional foods and or by-products of natural resources for local and commercial markets. Develop and/or strengthen the local economy through enhanced commercial trade in areas such as agriculture, aquaculture, lumber, and traditional arts and crafts.

Social Development: The investment in human and social capital for advancing people's well-being. Applicants are encouraged to develop and implement culturally appropriate projects to enhance tribal, community, and village activities. Social development projects under this area support families, elders, parents, positive youth development, healthy marriage, individuals with disabilities, and personal commitment. Program Areas of Interest include:

- Healthy Relationships and Strengthening Families Projects: The goal is to promote healthy family environments and strengthen co-parenting teamwork, problem-solving, and conflict resolution. Applicants should consider comprehensive projects that are culturally and socially appropriate to teach couples relationship-building skills, such as negotiation-based interpersonal communications, collaborative problem solving, and preservation of love, commitment, and friendship. Applicants are encouraged to be creative in their efforts to integrate elders into these projects to support traditional values and methods. Projects could address problematic periods in the family life cycle such as: Pregnancy, postpartum care, first-time parenthood, parenting adolescents, and goal setting for independent young adults.
- Projects to strengthen the long-term commitment of married couples. Projects should consider the enhancement of relationship skills through premarital counseling, mentoring activities, or role model activities.
- Projects to support young families in order to reduce the challenges and stress of child rearing and the risks associated with child/infant abuse and neglect, and projects to strengthen the bonds between parents and children, particularly between fathers and children, and the fathers' role in healthy families.
- Projects to develop and implement comprehensive culturally and socially appropriate projects to help youth practice personal responsibility; reach a balance in their lives by learning how to set and meet short and long-term goals; and to practice healthy lifestyles with the goal of decreasing gang activity, school dropout rates and juvenile delinquency.
- Projects to recruit, train, and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected, and abandoned Native American children, youth, and their families.
- Projects to develop, coordinate, and implement training for Native

Americans with disabilities in order to join the workforce, obtain information and technical assistance to apply for disability benefits, gain access to workplace facilities, and receive reasonable accommodations necessary to perform job functions.

Governance: Involves assistance to federally-recognized tribal and Alaska Native Village governments to increase their ability to exercise local control and decision-making over their resources. ANA encourages applications for the development of laws and policies that support community-based social, economic and governance activities. Governance projects under this area may be used for leadership and management training or to assist eligible applicants in the development of laws, regulations, codes, policies, and practices that support and promote community-based activities.

Program Areas of Interest include:

- Projects to enact laws that support and enforce business and investment transactions, contracts, and property rights. For example, develop and implement Uniform Commercial Codes (business codes) and Tax Codes.
- Projects to enact laws, ordinances, and policies, to develop, expand, and/or enhance utility and communications infrastructures.
- Projects to enrich and strengthen the management and leadership skills of senior tribal government personnel, and senior management personnel of tribally owned companies.
- Projects to establish and implement technology management information systems to assist with the effective and efficient administration of tribal government programs.
- Projects to develop or amend tribal constitutions, government procedures and functions, by-laws or codes, and council or executive branch duties in order to improve the regulatory, judicial and/or administrative infrastructure of tribal and village governments.
- Projects to develop, enact, and implement codes and ordinances for family welfare.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $18,000,000.

Anticipated Number of Awards: 110 to 120.

Ceiling on Amount of Individual Awards Per Budget Period: $500,000.

Floor on Amount of Individual Awards Per Budget Period: $25,000.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Average Projected Award Amount: $225,000.

Length of Project Periods:

12 month project and budget period.

17 month project and budget period.

24 month project with two 12 month budget periods.

36 month project with three 12 month budget periods.

III. Eligibility Information

1. Eligible Applicants

Native American tribal governments (federally recognized).

Native American tribal organizations (other than federally recognized tribal governments).

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Additional Information on Eligibility

- Federally recognized Indian tribes;
- Consortia of Indian tribes;
- Incorporated non-federally recognized tribes.
- Incorporated non-profit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated non-profit Native American organizations with Native American community-specific objectives;
- Alaska Native villages, as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or non-profit village consortia;
- Incorporated non-profit Alaska Native multi-purpose community-based organizations;
- Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Non-profit Native organizations in Alaska with village specific projects;
- Public and non-profit private agencies serving Native Hawaiians;
- Public and non-profit private agencies serving native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands (the populations served may be located on these islands or in the United States);
- Tribally-controlled Community Colleges, tribally-controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands which serve Native Pacific Islanders; and
- Non-profit Alaska Native community entities or Tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs.

Please refer to Section I Funding Opportunity Description to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

2. Cost Sharing/Matching

Yes.

Matching/Cost-Sharing

Grantees are required to meet a non-Federal share of the project costs, in accordance with 42 U.S.C. 2991(b)(3)(e)(1). Grantees must provide at least *20* percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting *$100,000* in Federal funds (based on an award of *$100,000* per budget period) must provide a match of at least *$25,000* (*20%* of the total approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal dollars. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

3. Other

All Applicants must have a Dun & Bradstreet Number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you

may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Applications that do not include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period will be considered non-responsive and will not be considered for competition.

If the applicant is not a tribe or Alaska Native Village government, applications that do not include proof that a majority of the governing board of directors is representative of the community to be served will be considered non-responsive and will not be considered for competition (see Section I. Funding Opportunity Description-Definitions, for information on resolutions).

Please see Section III.2 Other, concerning requirements for the cost matching which do not impact the responsiveness of an application for competitive review.

IV. Application and Submission Information

1. Address To Request Application Package

To learn more about ANA and receive information about Training and Technical Assistance (T/TA) contact:

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, W.VA.
Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, VA 22101.
Phone: 888–221–9686; Fax: 703–821.3680.
E-mail: *kking@namsinc.org.*
URL: *http://www.anaeastern.org.*

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY. ACKCO, Inc., 1326 N. Central, Suite 208, Phoenix, Arizona 85004.
Toll Free: 800–525.2859; Direct: 602–253.9211; Fax: 602–253.9135.
Theron Wauneka, Project Manager.
E-mail: *theron.wauneka@ackco.com.*
URL: *http://www.anawestern.org.*

Region III: Alaska.
Native American Management Services, Inc., 11723 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577.
Toll Free: 877–770.6230; Direct: 907–694.5711; Fax: 907–694.5775.
P.J. Bell, Project Manager.
E-mail: *region3@gci.net.*
URL: *http://www.anaalaska.org.*

Region IV: American Samoa (AS), Guam, Hawaii (HI), Commonwealth of Northern Mariana Islands (CNMI).
Council for Native Hawaiian Advancement, 33 South King Street, Suite 513, Honolulu, Hawaii 96813.
Toll-Free: 800–709.2642; Local: 808–521.5011; Fax: 808–521.4111.
Lilia Kapuniai, Vice President, Community Development.
E-mail: *info@anapacific.org.*
URL: *http://www.anapacific.org.*

2. Content and Form of Application Submission

Please refer to Section I. Funding Opportunity Description, to review general ANA Administrative Policies and Section IV. 5. Funding Restrictions.

Application Submission: Each application should include one signed original and two additional copies of the complete application. The original must include all required forms, certifications, assurances, and appendices, contain an original signature by an authorized representative, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. A complete application for assistance under this Program Announcement consists of three parts. Part One includes the SF 424, other required government forms, and other required documentation. Part Two of the application is the project narrative. This section of the application may not exceed 40 pages. The line-item budgets, budget justifications and the OWP form (OMB Control Number 0980–0204, exp 10/31/2006) will be exempt from the page limitation. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

Electronic Submission: While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that have not yet received clearance from Grants.gov. While electronic submission of applications may be available in the next fiscal year for this program, no electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the table below. ANA strongly suggests applicants label the application for ease of reviewing. The application must begin with the information requested in Part One of the chart in the prescribed order. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and

evaluating the information. Deviation from this suggested format will reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

ANA Application Format: ANA requires all applications to be labeled in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including Government Forms, certifications and assurances) must be numbered consecutively (for example, the first page of the application is the SF 424 and must be labeled as page one). The paper size shall be 8.5 x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. (Note: the 1.5 line spacing does not apply to the Project Abstract Form, Appendices, the Table of Contents, the Objective Work Plans, and the Budget.) The font size shall be 12-point and the font type shall be Times New Roman.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date: April 19, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

What to submit	Required content	Required form or format	When to submit
Table of Contents	See Section IV	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By application closing date.
SF424	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
SF424A	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS—Continued

What to submit	Required content	Required form or format	When to submit
Assurances and Certifications.	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
Grant Application Data Summary (GADS) Form SEDS.	See Section IV	ANA Form: OMB # 0970–0261, Exp. 03/31/2007 *http://www.acf.hhs.gov/programs/ana* (Go to Forms link to obtain the document).	By application closing date.
Indirect Cost Agreement	See Section V	Organizations and Tribes must submit a current indirect cost agreement (if claiming indirect costs) that aligns with the approved ANA project period. The Indirect Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By application closing date.
Proof of Non-Profit Status	See Section III	As described in this announcement under Section III "Additional Information on Eligibility".	By application closing date.
Resolution	See Section I	Information for submission can be found in the Program Announcement Section I, "Definitions".	By application closing date.
Board of Directors Documentation.	See Section I	As described in this announcement under Section I "ANA Administrative Policies".	By application closing date.
Audit Letter	See Section I	A Certified Public Accountant's "Independent Auditors" Report on Financial Statement." This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $500,000 or more of Federal funds). Applicant must also include that portion of the audit document that identifies all other Federal sources of funding entitled "Supplemental Schedule of Expenditures of Federal Awards".	By application closing date.
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	See Section I	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b) (3) of the Native American Program regulations. (if applicable).	By application closing date.
Certification regarding Maintenance of Effort.	See Section IV.2	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application closing date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	See Section IV.2	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application closing date.
Environmental Tobacco Smoke Certification.	See Section IV.2	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application closing date.

PART TWO.—APPLICATION REVIEW CRITERIA

Proposed project: what to submit	Required content	Required form or format ANA application review criteria This section may not exceed 40 pages	When to submit
Criteria One (10 pts)	See Section V	Introduction and Project Summary/Application Format: Include the ANA Project Abstract form (OMB # 0980–0204 exp. 10/31/2006).	By application closing date.
Criteria Two (20 pts)	See Section V	Need for Assistance	By application closing date.
Criteria Three (25 pts)	See Section V	Project Approach Include an Objective Work Plan (OWP) form (OMB # 0980–0204, exp. 10/31/2006) for each 12-month budget period. A 17-month project period requires only one OWP. **Note:** The OWP is not included in the page count for this Part.	By application closing date.
Criteria Four (15 pts)	See Section V	Organizational Capacity	By application closing date.
Criteria Five (15 pts)	See Section V	Project Impact/Evaluation	By application closing date.
Criteria Six (15 pts)	See Section V	Budget and Budget Justification/Cost Effectiveness **Note:** The Budget and Budget Justification is not included in the page count for this Part	By application closing date.

PART THREE.—APPENDIX

Support documentation: what to submit	Required content	Required form or format This section may not exceed 20 pages	When to submit
Appendix	See Section I	Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers or returned to the applicant.	By application closing date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

Applications are not subject to Executive Order 12372.

5. Funding Restrictions

ANA does not fund:

- Activities in support of any foreseeable litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.
- ANA does not fund duplicative projects or allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 C.F.R. 1336, Subpart C, but before funding decisions are complete (see Section I. Funding Opportunity Description-ANA Administrative Policies regarding short-term projects).
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.
- The purchase of real property or construction because these activities are not authorized by the Native American Programs Act of 1974, as amended.
- Core administration (See Definitions) functions, or other activities, that essentially support only the applicant's ongoing administrative functions and are not related to the proposed project. Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.
- Costs associated with fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award.
- Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village.
- Projects that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement.
- Major renovations or alterations are prohibited activities because these activities are not authorized under the Native American Programs Act of 1974 as amended. Minor alterations, as defined in this announcement, may be allowable.
- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long range development plan.
- The support of ongoing social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund activities by a consortium of tribes that duplicate activities for which a consortium member tribe also receives funding from ANA.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to:

Attention: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date.

Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to:

Attention: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grant, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, Washington, DC 20447.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how performance indicators under economic and social development and governance projects can be monitored, evaluated and verified.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number of elders participating in the activity during that reporting period.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional

accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental

costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach

Project Approach: (25 Points):

The applicant's narrative must be clear and concise. The narrative must include a detailed project description with goals and objectives. It must discuss the project strategy and implementation plan over the project period. The applicant must use the Objective Work Plan (OWP) form to identify the project objectives, time frames, proposed activities, results and benefits expected and criteria for evaluating results and benefits, as well as the individuals responsible for completing the objectives and performing the activities. Within the results and benefits section of the OWP, the applicant must provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. In this criterion, the applicant must summarize how the project description, objective(s), approach and strategy are inter-related. The applicant must also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project, utilizing the column for Non-Salaried Personnel to list the hours incurred for these activities. The applicant must discuss "Leveraged Resources" (see Definitions) used to strengthen and broaden the impact of the proposed project. The applicant must discuss how commitments and contributions from other entities will enhance the project. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds.

Objectives and Need for Assistance

Need for Assistance (20 Points):

Applicant must show a clear relationship between the proposed project, the social and economic development strategy, and the community's long-range goals. The need for assistance must clearly identify the physical, economic, social, financial, governmental, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the community (see Definitions) to be affected by the project and the community involvement in the project. The applicant must describe the community's long-range goals, the community planning process, and how the project supports the community goals. The applicant must describe how the proposed goals, objectives, and activities reflect either the economic and social development or governance needs of the local community. Discuss the geographic location of the project and where the project and grant will be administered. Applicant must describe how the proposed project objectives and activities relate to a locally determined strategy.

The applicant must provide documentation of the community's support for the proposed project. Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, identify the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based project delivery strategy. National and Regional organizations must also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Proposed project objectives support the identified need and must be measurable.

Budget and Budget Justification

Budget and Budget Justification/ Cost Effectiveness (15 Points):

An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share and cite source(s) of funding. The applicant must provide a detailed line-item Federal and non-Federal share budget by year for each year of project funds requested. A budget justification narrative to support the line-item budget request must be included for each year of project funds requested. The budget must include a line-item justification for each Object Class Category listed under Section B—"Budget Categories" of the SF 424 A "Budget Information-Non Construction Programs" form. The line-item budget and budget justification narrative must

include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

The non-Federal budget share must identify the source and be supported by letters of commitment (see Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization or individual will support a project. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters, as they do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a copy of its current Indirect Cost Rate Agreement must be included in the application, with all costs broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement may not be able to claim the allowable cost, may have the grant award amount reduced, or may experience a delay in grant award.

For business development projects, the proposal must demonstrate that the expected return on the ANA funds used to develop the project will provide a reasonable operating income and investment return within a specified time period. If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of the grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92).

Applicants are strongly encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one ANA post-award grant training and technical assistance workshop This expenditure is allowable for new grant recipients and optional for grantees that have had previous ANA grant awards. Applicants may also include costs for two staff persons to attend the ACF National Native American Conference.

Cost Effectiveness: This section of the criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving economic and social self-sufficiency for Native American communities. Applicants demonstrate this by: summarizing partnerships and the efficient use of leveraged resources; explaining the impact on the identified community through measurable project outcomes, and presenting a project that is completed, self-sustaining or supported by other than ANA funds by the end of the project period.

Organizational Profiles

Organizational Capacity (15 Points): In this criterion, the application provides information on the management structure of the applicant and the organizational relationships with its cooperating partners. Include an organizational chart that indicates where the proposed project will fit in the existing structure. Demonstrate experience in the program area. Describe the administrative structure, and the applicant's ability to administer and implement a project of the proposed scope and its capacity to fulfill the implementation plan. Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds.

Applicants must list all current sources of Federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues must be discussed in this criterion.

Applicants must provide "staffing and position data" to include a proposed staffing pattern for the project where the applicant highlights the new project staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Applicant must provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff. Full position descriptions are required to be submitted and included in the Appendix. Applicant must explain how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals must be included. Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant.

If applicable, applicant must identify consortium membership. The consortium applicant must be the recipient of the funds. A consortium applicant must be an "eligible entity" as defined by this Program Announcement and the ANA regulations. Consortium applicants must include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortium members supporting the ANA application. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes that duplicate activities for which member tribes also receive funding from ANA. The consortium application must identify the role and responsibility of each participating consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

If relevant to the project, applicants must provide a Business Plan or any Third-Party Agreements in the appendices. (Not counted in Appendix page limit.)

Results or Benefits Expected

Project Impact/Evaluation (15 Points): In this criterion, the applicant will discuss the "Impact Indicators" (see Definitions) and the benefits expected as a result of this project. Impact indicators identify qualitative and quantitative data directly associated with the project. Each applicant must submit five impact indicators to support the applicant's project. Two of the five are standard and required across all ANA programs. For each impact indicator submitted the applicant must discuss the relevance of the impact indicator to the project, the method used to track the indicator, and the method used to determine project success. Impact indicators will be reported to ANA in the grantee's quarterly report. The applicant must indicate a target number to be achieved for the required standard impact indicators. In addition to the two standard required impact indicators, an applicant must also submit three additional impact indicators. These three impact indicators may be selected from the suggested list given below, or they may be developed for the specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and applicant project-specific indicators. The two standard required impact indicators are:

(a) Number of partnerships formed; and (b) amount of dollars leveraged beyond the required NFS match. The suggested ANA impact indicators are: (1) Number of infrastructures and administrative systems, including policies and procedures developed and implemented; (2) number of codes or ordinances developed and implemented; (3) number of people to successfully complete a workshop/training; (4) number of children, youth, families or elders assisted or participating; (5) number of volunteer hours; (6) Number of faith based and community-based partnerships; (7) number of jobs created; (8) number of community-based small businesses established or expanded; (9) identification of tribal or village government business, industry, energy, or financial codes or ordinances that were adopted or enacted; (10) number of micro-businesses started.

The applicant should discuss the projects value and long-tem impact to the participants and the community and explain how the information relates to the proposed project goals, objectives and outcomes. The applicant should discuss how the project will be complete, self-sustaining, or supported by other than ANA funds at the end of the project period. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period or quarter (if applicable). Project outcomes should support the identified need and should be measurable and quantifiable.

Introduction—Project Summary/Abstract

Introduction and Project Summary/Application Format (10 Points):

Introduction and Project Summary: Using the ANA Project Abstract form (OMB Control Number 0980–0204, Exp. 10/31/2006), the applicant must include: the name of the applicant, the project title, the Federal amount requested, the amount of matching funds to be provided, length of time required to accomplish the project, the goal of the project, a list of the project objectives (not activities), the estimated number of people to be served and the expected outcomes of the project.

In addition to the Project Abstract form, the applicant will provide an introductory summary narrative that includes: an overview of the project, a description of the community to be served, the location of the identified community, a declarative statement identifying the need for the project, and a brief overview of the project's objectives, strategy and community or organizational impact.

Application Format: Applicants are required to submit applications in a standard format, following the ANA requirements on application length, font, numbering, line spacing, etc. Please refer to Section IV Part 2, "Content and Form of Application Submission" for detailed formatting instructions.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial Screening: Each application submitted under an ANA program announcement will undergo a pre-review screening for: (a) Timeliness—the application was received by 4:30 p.m. eastern time on the closing date; (b) the applicant has submitted a current dated and signed resolution from the governing body; (c) the Federal request does not exceed the upper value of the dollar range specified; and, (d) if the applicant is not a tribe or Alaska Native village government, the applicant has submitted proof that a majority of the governing board of directors is representative of the community to be served. An application that does not meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants, with incomplete applications, will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. The notification will include the reviewer comments. Applicants are not ranked based on general financial need. Applicants, who are initially excluded from competition because of ineligibility, may appeal the agency's decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

Competitive Review Process: Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the Evaluation Criteria. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability of ANA to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria standardizes the review of each application and distributes the number of points more equitably. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. A determination will be made as to whether the project is an effective use of Federal funds.

Application Review Criteria: Applicants will be reviewed based on the following criteria and points: ANA's six criteria categories are Introduction and Project Summary/Application Format; Need for Assistance; Project Approach; Organizational Capacity; Project Impact/Evaluation; and Budget and Budget Narrative/Cost Effectiveness.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and recommendations; an analysis by ANA staff; review of previous ANA grantee's past performance; comments from State and Federal agencies having contract and grant performance related information; and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Approved but Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same

program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

3. Anticipated Announcement and Award Dates

Approximately 120 days after the application due date, the successful applicants will be notified by mail through the issuance of a Financial Assistance Award document which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and sent to the applicants Authorizing Official. Applications not funded in this competition will be notified in writing.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail. Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR part 74.
45 CFR part 92.
45 CFR part 1336, subpart C, and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974.

3. Reporting Requirements

Programmatic Reports: Quarterly.
Financial Reports: Quarterly.

An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial Status Reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final SF 269 report shall be due 90 days after the end of the project period.

VII. Agency Contacts

Program Office Contact: ANA Applicant Help Desk, Aerospace Center, 8th Floor-West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Phone: 877–922–9262. *E-mail: ana@acf.hhs.gov.*

Grants Management Office Contact: Tim Chappelle,Administration for Children and Families, Grants Management Office, Division of Discretionary Grants, Aerospace Building 8th Floor-West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Phone: 202–401–2344. E-mail: *tichappelle@acf.hhs.gov.*

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive free T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants must check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262. ANA strongly encourages all prospective applicants to participate in free pre-application training. For regional T/TA provider information contact information, please refer to Section IV.1. Application and Submission Information.

Applicants will not be sent an acknowledgement of received applications.

Priority Area 2

Social and Economic Development Strategies—Alaska

Description: In fiscal year 1984, ANA implemented a special Alaska Social and Economic Development initiative to support activities at the village level. This special effort was designed to provide small amounts of project seed money for village-specific projects to improve and strengthen the capacity of village governments, an integral part of social and economic self-sufficiency. ANA continues to implement this special initiative with a renewed awareness that economic, social and governance development is interrelated. ANA believes both the non-profit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages in the development and implementation of their own locally determined strategies, which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA).

Financial Assistance under the SEDS-Alaska program is provided utilizing a competitive process in accordance with the Native American Programs Act of 1974, as amended. The purpose of the Act is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, Alaskan Natives, and other Native American Pacific Islanders including American Samoa natives.

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural components necessary for a sustainable local community. Applicants are encouraged to develop sustainable projects to support sustainable, stable, and diversified private sector local economies. Program Areas of Interest include:

- Projects to strengthen an organization's capacity to deliver business technical assistance, workshops and financial literacy programs, that create, expand, and retain public and private sector community-based businesses.
- Projects to increase cooperative enterprise development activities, and technical capacity of youth to establish and operate cooperative businesses with the goal of teaching financial, management and long-term employment skills.
- Projects to plan and coordinate emergency response services within the community and with State and local governments to protect against Acts of Nature and other catastrophic events such as fire, floods, and environmental catastrophes.
- Projects to implement initiatives based on a feasibility study that assessed the economic potential of energy resources in their community, including renewable energy sources such as: Bio-energy, Geothermal, Hydrogen, Hydropower, Ocean, Solar, Wind, or other methods appropriate to the tribe and geographical location. Projects to develop community transportation activities that support the needs of the elderly, the disabled, and the local workforce.
- Projects to develop organizational and management capacity building activities that enhance community-based program delivery systems and services.
- Projects to develop and implement community-based activities that

increase international tourism and trade activities for Native American products, services, and communities. Business sectors of interest include: the export of Native American packaged foods; arts and crafts; literature and music; manufactured products; agricultural and organic products; value-added product assembly or processing that includes agriculture and aquaculture.

• Projects to develop and enhance subsistence activities that retain, or re-establish Native traditional foods and or by-products of natural resources for local and commercial markets. Develop and/or strengthen the local economy through enhanced commercial trade in areas such as agriculture, aquaculture, lumber, and traditional arts and crafts.

Social Development: The investment in human and social capital for advancing people's well-being. Applicants are encouraged to develop and implement culturally appropriate programs to enhance tribal, community, and village activities. Social development programs under this area support families, elders, parents, positive youth development, healthy marriage, individuals with disabilities, and personal commitment. Program Areas of Interest include:

• Healthy Relationships and Strengthening Families Projects: The goal is to promote healthy family environments and strengthen co-parenting teamwork, problem-solving, and conflict resolution. Applicants should consider comprehensive projects that are culturally and socially appropriate to teach couples relationship-building skills, such as negotiation-based interpersonal communications, collaborative problem solving, and preservation of love, commitment, and friendship. Applicants are encouraged to be creative in their efforts to integrate elders into these projects to support traditional values and methods. Projects could address problematic periods in the family life cycle such as: pregnancy, postpartum care, first-time parenthood, parenting adolescents, and goal setting for independent young adults.

• Projects to strengthen the long-term commitment of married couples. Projects should consider the enhancement of relationship skills through premarital counseling, mentoring activities, or role model activities.

• Projects to support young families in order to reduce the challenges and stress of child rearing, and the risks associated with child/infant abuse and neglect, strengthening the bonds between parents and children, and particularly between fathers and children and the fathers' role in healthy families.

• Projects to develop and implement comprehensive culturally and socially appropriate projects to help youth practice personal responsibility; reach a balance in their lives by learning how to set and meet short and long-term goals; and to practice healthy lifestyles with the goal of decreasing gang activity, school dropout rates and juvenile delinquency.

• Projects to recruit, train, and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected, and abandoned Native American children, youth, and their families.

• Projects to develop, coordinate, and implement training for Native Americans with disabilities in order to join the workforce, obtain information and technical assistance to apply for disability benefits, gain access to workplace facilities, and receive reasonable accommodations necessary to perform job functions.

Governance: Involves assistance to federally-recognized Tribal and Alaska Native Village governments to increase their ability to exercise local control and decision-making over their resources. ANA encourages applications for the development of laws and policies that support community-based social, economic and governance activities. Governance projects under this area may be used for leadership and management training or to assist eligible applicants in the development of laws, regulations, codes, policies, and practices that support and promote community-based activities.

Program Areas of Interest include:

• Projects to enact laws that support and enforce business and investment transactions, contracts, and property rights. For example, develop and implement Uniform Commercial Codes (business codes) and Tax Codes.

• Projects to enact laws, ordinances, and policies, to develop, expand, and/or enhance utility and communications infrastructures.

• Projects to enrich and strengthen the management and leadership skills of senior tribal government personnel, and senior management personnel of tribally owned companies.

• Projects to establish and implement technology management information systems to assist with the effective and efficient administration of tribal government programs.

• Projects to develop or amend tribal constitutions, government procedures and functions, by-laws or codes, and council or executive branch duties in order to improve the regulatory, judicial and/or administrative infrastructure of tribal and village governments.

• Projects to develop, enact, and implement codes and ordinances for family welfare.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $2,000,000.

Anticipated Number of Awards: 10 to 20.

Ceiling on Amount of Individual Awards Per Budget Period: $175,000.

Floor on Amount of Individual Awards Per Budget Period: $25,000.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Average Projected Award Amount: $75,000.

Length of Project Periods:

12 month project and budget period.

17 month project and budget period.

24 month project with two 12 month budget periods.

36 month project with three 12 month budget periods.

Average Projected Award Amount:

$25,000–$125,000 for Individual Village Projects per budget period.

$25,000–$175,000 for Regional Non-profit and Village Consortia per budget period.

Ceiling on Amount of Individual Awards:

$125,000 for Individual Village Projects.

$175,000 for Regional Non-profit and Village Consortia.

III. Eligibility Information

1. Eligible Applicants

Native American tribal governments (federally recognized).

Native American tribal organizations (other than federally recognized tribal governments).

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Others (see Additional Information on Eligibility below).

Additional Information on Eligibility

• Federally Recognized Indian tribes in Alaska;

• Alaska Native villages, as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or non-profit village consortia;

• Incorporated non-profit Alaska Native multi-purpose community-based organizations;

• Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

• Non-profit Native organizations in Alaska with village specific projects.

2. Cost Sharing/Matching

Yes.

Matching/Cost-Sharing

Grantees are required to meet a non-Federal share of the project costs, in accordance with 42 U.S.C. 2991(b)(3)(e)(1). Grantees must provide at least *20* percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $*100,000* in Federal funds (based on an award of $*100,000* per budget period) must provide a match of at least $*25,000* (*20*% of the total approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal dollars. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

3. Other

Please refer to Section I. Funding Opportunity Description to review general ANA Administrative Policies and Section IV.5. Funding Restrictions.

All Applicants must have a Dun & Bradstreet Number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

• A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.

• A copy of a currently valid IRS tax exemption certificate.

• A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.

• A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

• Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

Applications that do not include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period will be considered non-responsive and will not be considered for competition.

If the applicant is not a tribe or Alaska Native Village government, applications that do not include proof that a majority of the governing board of directors is representative of the community to be served will be considered non-responsive and will not be considered for competition (*see* Section I. Funding Opportunity Description-Definitions, for information on resolutions).

Please see Section III.2 Other, concerning requirements for the cost matching which do not impact the responsiveness of an application for competitive review.

IV. Application and Submission Information

1. Address To Request Application Package

To learn more about ANA and receive information about Training and Technical Assistance (T/TA) contact: Region III: Alaska, Native American Management Services, Inc., Attn: P.J. Bell, Project Manager, 11723 Old Glenn Highway, Suite 201, Eagle River, AK 99577. Phone: 877–770–6230; Fax: 907–694–5775.

E-mail: *region3@gci.net.*

URL: *http://www.anaalaska.org.*

2. Content and Form of Application Submission

Please refer to Section I. Funding Opportunity Description, to review general ANA Administrative Policies and Section IV. 5. Funding Restrictions.

Application Submission: Each application should include one signed original and two additional copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, contain an original signature by an authorized representative, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. A complete application for assistance under this Program Announcements consists of Three Parts. Part One includes the SF 424, other required government forms, and other required documentation.

Part Two of the application is the project narrative. This section of the application may not exceed 40 pages. The line-item budgets, budget justifications and the OWP form (OMB Control Number 0980–0204, exp 10/31/2006) will be exempt from the page limitation. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

Electronic Submission: While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that

have not yet received clearance from Grants.gov. While electronic submission of applications may be available in the next fiscal year for this program, no electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the table below. ANA strongly suggests applicants label the application for ease of reviewing. The application must begin with the information requested in Part One of the table in the prescribed order (*see* Section IV "Application and Submission Information"). Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format will reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

ANA Application Format: ANA requires all applications to be labeled in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including Government Forms, certifications and assurances) must be numbered consecutively (for example, the first page of the application is the SF 424 and must be labeled as page one). The paper size shall be 8.5 × 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. (**Note:** The 1.5 line spacing does not apply to the Project Abstract Form, Appendices, the Table of Contents, the Objective Work Plans, and the Budget.) The font size shall be 12-point and the font type shall be Times New Roman.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date: April 19, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

What to submit	Required content	Required form or format	When to submit
Table of Contents	See Section IV	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By application closing date.
SF424	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
SF424A	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
Assurances and Certifications.	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application closing date.
Grant Application Data Summary (GADS) Form SEDS.	See Section IV	ANA Form: OMB #0970–0261, Exp. 03/31/2007; *http://www.acf.hhs.gov/programs/ana* (Go to Forms link to obtain the document).	By application closing date.
Indirect Cost Agreement	See Section V	Organizations and Tribes must submit a current indirect cost agreement (if claiming indirect costs) that aligns with the approved ANA project period. The Indirect Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By application closing date.
Proof of Non-Profit Status	See Section III	As described in this announcement under Section III "Additional Information on Eligibility".	By application closing date.
Resolution	See Section I	Information for submission can be found in the Program Announcement Section I, "Definitions".	By application closing date.
Board of Directors Documentation.	See Section I	As described in this announcement under Section I "ANA Administrative Policies".	By application closing date.
Audit Letter	See Section I	A Certified Public Accountant's "Independent Auditors' Report on Financial Statement." This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $500,000 or more of Federal funds). Applicant must also include that portion of the audit document that identifies all other Federal sources of funding entitled "Supplemental Schedule of Expenditures of Federal Awards".	By application closing date.
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	See Section I	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program regulations. (if applicable).	By application closing date.
Certification regarding Maintenance of Effort.	See Section IV.2	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application closing date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	See Section IV.2	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application closing date.
Environmental Tobacco Smoke Certification.	See Section IV.2	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application closing date.

PART TWO.—APPLICATION REVIEW CRITERIA

What to submit	Required content	Required form or format ANA application review criteria This section may not exceed 40 pages	When to submit
Criteria One (10 pts)	See Section V	Introduction and Project Summary/Application Format: Include the ANA Project Abstract form (OMB #0980–0204 exp. 10/31/2006).	By application closing date.
Criteria Two (20 pts)	See Section V	Need for Assistance	By application closing date.
Criteria Three (25 pts)	See Section V	Project Approach Include an Objective Work Plan (OWP) form (OMB# 0980–0204, exp. 10/31/2006) for each 12-month budget period. A 17-month project period requires only one OWP. **Note:** The OWP is not included in the page count for this Part.	By application closing date.
Criteria Four (15 pts)	See Section V	Organizational Capacity	By application closing date.
Criteria Five (15 pts)	See Section V	Project Impact/Evaluation	By application closing date.
Criteria Six (15 pts)	See Section V	Budget and Budget Justification/Cost Effectiveness **Note:** The Budget and Budget Justification are not included in the page count for this Part.	By application closing date.

PART THREE.—APPENDIX

What to submit	Required content	Required form or format This section may not exceed 20 pages	When to submit
Appendix	See Section I	Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: Letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers or returned to the applicant.	By application closing date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms," "Survey for Private, Non-Profit Grant Applicants," titled, "Survey on Ensuring Equal Opportunity for Applicants," at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

Applications are not subject to Executive Order 12372.

5. Funding Restrictions

ANA does not fund:

- Activities in support of any foreseeable litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.
- ANA does not fund duplicative projects or allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR 1336, subpart C, but before funding decisions are complete (*see* Section I. Funding Opportunity Description—ANA Administrative Policies, regarding short-term projects).
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.
- The purchase of real property or construction because these activities are not authorized by the Native American Programs Act of 1974, as amended.
- Core administration (*see* Definitions) functions, or other activities, that essentially support only the applicant's ongoing administrative functions and are not related to the proposed project. Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.
- Costs associated with fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award.
- Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, tribe, or village.
- Projects that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement.
- Major renovations or alterations are prohibited activities because these activities are not authorized under the Native American Programs Act of 1974 as amended. Minor alterations, as defined in this announcement, may be allowable.
- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long range development plan.
- The support of ongoing social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund activities by a consortium of tribes that duplicate activities for which a consortium member tribe also receives funding from ANA.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to: Attention: Tim Chappelle, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of

8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: Attention: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grant, 901 D Street, SW., ACF Mail Room, Second Floor Loading Dock, Washington, DC 20447.

Electronic Submission: http://www.Grants.gov. Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how performance indicators under economic and social development and governance projects can be monitored, evaluated and verified.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Examples of these activities would be the number of businesses started or expanded, the number of jobs created or retained, the number of people trained, the number of youth, couples or families assisted or the number of elders participating in the activity during that reporting period.

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on

compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental

costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*e.g.* from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach

Project Approach (25 Points):

The Project Approach narrative must be clear and concise. The narrative must include a detailed project description with goals and objectives. It must discuss the project strategy and implementation plan over the project period. The applicant must use the Objective Work Plan (OWP) form to identify the project objectives, time frames, proposed activities, results and benefits expected and criteria for evaluating results and benefits, as well as the individuals responsible for completing the objectives and performing the activities. Within the results and benefits section of the OWP, the applicant must provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. In this criterion, the applicant must summarize how the project description, objective(s), approach and strategy are inter-related. The applicant must also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project, utilizing the column for Non-Salaried Personnel to list the hours incurred for these activities. The applicant must discuss "Leveraged Resources" (see Definitions) used to strengthen and broaden the impact of the proposed project. The applicant must discuss how commitments and contributions from other entities will enhance the project. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds.

Objectives and Need for Assistance

Need For Assistance (20 Points):

Applicant must show a clear relationship between the proposed project, the social and economic development strategy, and the community's long-range goals. The need for assistance must clearly identify the physical, economic, social, financial, governmental, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the community (see Definitions) to be affected by the project and the community involvement in the project. The applicant must describe the community's long-range goals, the community planning process, and how the project supports the community goals. The applicant must describe how the proposed goals, objectives, and activities reflect either the economic and social development or governance needs of the local community. Discuss the geographic location of the project and where the project and grant will be administered. Applicant must describe how the proposed project objectives and activities relate to a locally determined strategy.

The applicant must provide documentation of the community's support for the proposed project. Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, identify the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based project delivery strategy. National and Regional organizations must also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Proposed project objectives support the identified need and must be measurable.

Budget and Budget Justification

Budget and Budget Justification/Cost Effectiveness (15 Points):

An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share and cite source(s) of funding. The applicant must provide a detailed line-item Federal and non-Federal share budget by year for each year of project funds requested. A budget justification narrative to support the line-item budget request must be included for each year of project funds requested. The budget must include a line-item justification for each Object

Class Category listed under Section B—"Budget Categories" on the SF 424A "Budget Information-Non Construction Programs" form. The line-item budget and budget justification narrative must include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

The non-Federal budget share must identify the source and be supported by letters of commitment (*see* Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization or individual will support a project. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters, as they do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a copy of its current Indirect Cost Rate Agreement must be included in the application, with all costs broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement may not be able to claim the allowable cost, may have the grant award amount reduced, or may experience a delay in grant award.

Applicants are strongly encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one ANA post-award grant training and technical assistance workshop. This expenditure is allowable for new grant recipients and optional for grantees that have had previous ANA grant awards, and will be negotiated upon award. Applicants may also include costs for two staff to attend an ACF National Native American Conference.

For business development projects, the proposal must demonstrate that the expected return on the ANA funds used to develop the project will provide a reasonable operating income and investment return within a specified time period. If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of the grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92).

Cost Effectiveness: This section of the criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving economic and social self-sufficiency for Native American communities. Applicants demonstrate this by: ASummarizing partnerships and the efficient use of leveraged resources; explaining the impact on the identified community through measurable project outcomes, and presenting a project that is complete, self-sustaining or supported by other than ANA funds by the end of the project period.

Organizational Profiles

Organizational Capacity (15 Points): In this criterion, the application provides information on the management structure of the applicant and the organizational relationships with its cooperating partners. Include an organizational chart that indicates where the proposed project will fit in the existing structure. Demonstrates experience in the program area. Describe the administrative structure, and the applicant's ability to administer and implement a project of the proposed scope and its capacity to fulfill the implementation plan. Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds.

Applicants must list all current sources of Federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues must be discussed in this criterion.

Applicants must provide "staffing and position data" to include a proposed staffing pattern for the project where the applicant highlights the new project staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Applicant must provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff. Full position descriptions are required to be submitted and included in the Appendix. Applicant must explain how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals must be included. (**Note:** Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant.)

If applicable, applicant must identify consortium membership. The consortium applicant must be the recipient of the funds. A consortium applicant must be an "eligible entity" as defined by this Program Announcement and the ANA regulations. Consortium applicants must include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortium members supporting the ANA application. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes that duplicate activities for which member Tribes also receive funding from ANA. The consortium application must identify the role and responsibility of each participating consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

If relevant to the project, applicants must provide a Business Plan or any Third-Party Agreements in the appendices. (Not counted in Appendix page limit).

Results or Benefits Expected

Project Impact/Evaluation: (15 Points):

In this criterion, the applicant will discuss the "Impact Indicators" (see Definitions) and the benefits expected as a result of this project. Impact indicators identify qualitative and quantitative data directly associated with the project. Each applicant must submit five impact indicators to support the applicant's project. Two of the five are standard and required across all ANA programs. For each impact indicator submitted the applicant must discuss the relevance of the impact indicator to the project, the method used to track the indicator and the method used to determine project success. Impact indicators will be reported to ANA in the grantee's quarterly report. The applicant must indicate a target number to be achieved for the required standard impact indicators. In addition to the two standard required impact indicators, an applicant must also submit three additional impact indicators. These three impact indicators may be selected from the suggested list given below, or

they may be developed for the specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and applicant project-specific indicators. The two standard required impact indicators are: (a) Number of partnerships formed; and (b) amount of dollars leveraged beyond the required NFS match. The suggested ANA impact indicators are: (1) Number of infrastructures and administrative systems, including policies and procedures developed and implemented; (2) number of codes or ordinances developed and implemented; (3) number of people to successfully complete a workshop/training; (4) number of children, youth, families or elders assisted or participating; (5) number of volunteer hours; (6) number of faith-based and community-based partnerships; (7) number of jobs created; (8) number of community-based small businesses established or expanded; (9) identification of tribal or village government business, industry, energy, or financial codes or ordinances that were adopted or enacted; (10) number of micro-businesses started.

The applicant should discuss the value and long-term impact to the participants and the community and explain how the information relates to the project goals, objectives and outcomes. The applicant should discuss how the project will be complete, self-sustaining, or supported by other than ANA funds at the end of the project period. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period or quarter (if applicable). Project outcomes should support the identified need and should be measurable and quantifiable.

Introduction—Project Summary/Abstract

Introduction and Project Summary/Application Format: (10 Points)

Introduction and Project Summary: Using the ANA Project Abstract form (OMB Control Number 0980–0204, Exp. 10/31/2006), the applicant must include: The name of the applicant, the project title, the Federal amount requested, the amount of matching funds to be provided, length of time required to accomplish the project, the goal of the project, a list of the project objectives (not activities), the estimated number of people to be served, and the expected outcomes of the project.

In addition to the Project Abstract form, the applicant will provide an introductory narrative that includes: An overview of the project, a description of the community to be served, the location of the identified community, a declarative statement identifying the need for the project, and a brief overview of the project objectives, strategy and community or organizational impact.

Application Format: Applicants are required to submit applications in a standard format, following the ANA requirements on application length, font, numbering, line spacing, etc. Please refer to Section IV Part 2 "Content and Form of Application Submission" for detailed formatting instructions.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial Screening: Each application submitted under an ANA program announcement will undergo a pre-review screening to determine: (a) Timeliness—the application was received by 4:30 p.m. eastern time on the closing date; (b) the Federal request does not exceed the upper value of the dollar range specified; (c) the applicant has submitted a current dated and signed resolution from the governing body; and, (d) if the applicant is not a tribe or Alaska Native village government, the applicant has submitted proof that a majority of the governing board of directors is representative of the community to be served. An application that does not meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants with incomplete applications will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. The notification will include the reviewer comments. Applicants are not ranked based on general financial need. Applicants who are initially excluded from competition because of ineligibility may appeal the agency's decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

Competitive Review Process: Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the Evaluation Criteria. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability of ANA to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria standardizes the review of each application and distributes the number of points more equitably. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. A determination will be made as to whether the project is an effective use of Federal funds.

Application Review Criteria: Applicants will be reviewed based on the following criteria and points: ANA's six criteria categories are: Introduction and Project Summary/Application Format; Need for Assistance; Project Approach; Organizational Capacity; Project Impact/Evaluation; and Budget and Budget Narrative/Cost Effectiveness.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and recommendations; an analysis by ANA staff; review of previous ANA grantee's past performance; comments from State and Federal agencies having contract and grant performance related information; and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Approved But Unfunded Applications

In cases where more applications are approved for funding than ACF can

fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail. Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR part 74.

45 CFR part 92.

45 CFR part 1336, subpart C, and 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974.

3. Reporting Requirements

Programmatic Reports: Quarterly.
Financial Reports: Quarterly.

An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Performance reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final performance report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial Status Reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final SF 269 report shall be due 90 days after the end of the project period.

VII. Agency Contacts

Program Office Contact:

ANA Applicant Help Desk, Aerospace Center, 8th Floor-West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Phone: 877–922–9262. E-mail: *ana@acf.hhs.gov.*

Grants Management Office Contact:

Tim Chappelle, Administration for Children and Families, Grants Management Office, Division of Discretionary Grants, Aerospace Building, 8th Floor-West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Phone: 202–401–2344. E-mail: *tichappelle@acf.hhs.gov.*

VIII. Other Information

Training and Technical Assistance: All potential ANA applicants are eligible to receive free T&TA in the SEDS, Language, or Environmental program areas. Prospective applicants must check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262. ANA strongly encourages all prospective applicants to participate in free pre-application training. For regional T/TA provider information contact information, please refer to Section IV.

Applicants will not be sent an acknowledgement of received applications.

Dated: January 26, 2005.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 05–1900 Filed 2–2–05; 8:45 am]

BILLING CODE 4184–01–P

Reader Aids

Federal Register

Vol. 70, No. 22

Thursday, February 3, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5043–5348 1
5349–5542 2
5543–5914 3

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

5 CFR
Ch. XCVII 5272
5501 5543
5502 5543
9701 5272

7 CFR
1700 5349
1709 5349
Proposed Rules:
1700 5382
1709 5382

9 CFR
94 5043

11 CFR
110 5565
Proposed Rules:
109 5382
300 ..... 5382, 5385

12 CFR
Proposed Rules:
Ch. 1 5571
Ch. 2 5571
Ch. 3 5571
Ch. 4 5571

13 CFR
125 5568

14 CFR
39 ..... 5361, 5365, 5367, 5515
71 5370
119 5518
121 5518
129 5518
135 5518
183 5518
Proposed Rules:
39 ..... 5064, 5066, 5070, 5073, 5076, 5078, 5081, 5387, 5390

17 CFR
Proposed Rules:
1 5577

22 CFR
22 5372

26 CFR
1 5044

27 CFR
Proposed Rules:
9 ..... 5393, 5397

33 CFR
100 5045
117 5048
165 ..... 5045, 5048, 5050
Proposed Rules:
165 5083

37 CFR
1 5053

39 CFR
111 5055

40 CFR
52 5377
81 5057
442 5058
Proposed Rules:
51 5593
52 ..... 5085, 5399
122 5093
155 5400
442 5100

42 CFR
Proposed Rules:
412 5724

47 CFR
73 ..... 5380, 5381

49 CFR
Proposed Rules:
605 5600

50 CFR
622 ..... 5061, 5569
679 5062
Proposed Rules:
17 ..... 5101, 5117, 5123, 5401, 5404
622 5128

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 3, 2005

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Emerging Markets Program; published 1-4-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Supplemental standards of ethical conduct and financial disclosure requirements for department employees; published 2-3-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

St. Johns River, FL; safety zone; published 1-26-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Santa Ana sucker; published 1-4-05

JUSTICE DEPARTMENT

Drug Enforcement Administration

Records, reports, and exports of listed chemicals:

Drug products containing gamma-hydroxybutyric acid; published 1-4-05

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Uniform relocation assistance and real property acquisition for Federal and federally-assisted programs; published 1-4-05

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Tire safety information; technical amendment; published 1-4-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Fluid Milk Promotion Program:

National Fluid Milk Processor Promotion Board; membership; amendments; comments due by 2-11-05; published 1-12-05 [FR 05-00580]

Grapes grown in—

Southeastern California; comments due by 2-10-05; published 1-11-05 [FR 05-00470]

Pistachios grown in—

California; comments due by 2-8-05; published 12-10-04 [FR 04-27157]

Plant Variety and Protection Office; supplemental fees; comments due by 2-10-05; published 1-11-05 [FR 05-00472]

Spearmint oil produced in—

Far West; comments due by 2-11-05; published 1-12-05 [FR 05-00581]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Overtime services relating to imports and exports:

Agricultural and quarantine inspection services; user fees adjustment; comments due by 2-7-05; published 12-9-04 [FR 04-27053]

BLIND OR SEVERELY DISABLED, COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE

Committee for Purchase From People Who Are Blind or Severely Disabled

Javits-Wagner-O'Day Program:

Nonprofit agencies and central nonprofit agencies; governance standards; comments due by 2-10-05; published 12-3-04 [FR 04-26651]

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:

Automated Export System; rough diamonds; mandatory filing for exports (reexports); comments due by 2-11-05; published 1-12-05 [FR 05-00597]

COMMERCE DEPARTMENT

Government owned inventions; licensing; comments due by 2-7-05; published 1-7-05 [FR 05-00338]

COMMERCE DEPARTMENT

Industry and Security Bureau

Chemical Weapons Convention Regulations:

Requirements update and clarification; comments due by 2-7-05; published 1-6-05 [FR 05-00287]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Critical habitat designations—

Pacific salmon and steelhead; California evolutionary significant units; comments due by 2-8-05; published 12-10-04 [FR 04-26681]

Pacific salmon and steelhead; California evolutionary significant units; comments due by 2-8-05; published 1-4-05 [FR 05-00094]

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; comments due by 2-9-05; published 1-10-05 [FR 05-00437]

Marine mammals:

Bottlenose Dolphin Take Reduction Plan; comments due by 2-8-05; published 11-10-04 [FR 04-25113]

Correction; comments due by 2-8-05; published 11-23-04 [FR C4-25113]

COMMERCE DEPARTMENT

Patent and Trademark Office

Cooperative Research and Technology Enhancement Act; implementation; comments due by 2-10-05; published 1-11-05 [FR 05-00461]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Other solid waste incineration units; comments due by 2-7-05; published 12-9-04 [FR 04-26741]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New Mexico; comments due by 2-9-05; published 1-10-05 [FR 05-00341]

Air quality implementation plans:

Preparation, adoption, and submittal—

Vehicle Inspection Maintenance Program; 8-hour ozone national ambient air quality standard requirements; comments due by 2-7-05; published 1-6-05 [FR 05-00177]

Air quality implementation plans; approval and

Credits and fines; manufacturer rights and responsibilities in corporate relationships changes context; comments due by 2-11-05; published 12-28-04 [FR 04-28237]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Pension plan distributions under a phased retirement program; comments due by 2-8-05; published 11-10-04 [FR 04-24874]

LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 241/P.L. 109-1

To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Printed on recycled paper