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

WHEN: Tuesday, April 4, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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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. 71, No. 53
Monday, March 20, 2006

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–031–2]

Pine Shoot Beetle; Interstate Movement of Pine Bark Products From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pine shoot beetle regulations to allow pine bark products to be moved interstate from quarantined areas during the shoot feeding stage (July 1 through October 31) of the pine shoot beetle's life cycle without treatment. We are making this change because pine shoot beetles are not present in pine bark products during that stage. We are also establishing a management method to allow pine bark products to be moved interstate from quarantined areas during the overwintering stage (November 1 through March 31) and spring flight stage (April 1 through June 30) of the pine shoot beetle's life cycle. This action relieves restrictions on the interstate movement of pine bark products from quarantined areas during 4 months of the year and provides for the use of a management method as an alternative to fumigation with methyl bromide for pine bark products moved interstate from quarantined areas during the rest of the year.

DATES: *Effective Date:* April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

On June 6, 2005, we published in the **Federal Register** (70 FR 32733–32738, Docket No. 04–031–1) a proposed rule to amend the regulations to allow pine bark products to be moved interstate from quarantined areas during the shoot feeding stage (July 1 through October 31) of the PSB's life cycle without treatment. We also proposed to establish a management method to allow pine bark products to be moved interstate from quarantined areas during the overwintering stage (November 1 through March 31) and spring flight stage (April 1 through June 30) of the PSB's life cycle.

We solicited comments concerning our proposal for 60 days ending August 5, 2005. We received one comment by that date, from a private citizen.

The commenter was generally opposed to the proposed rule and pointed to the statement in the proposed rule that no research has yet been conducted regarding the mortality rate for PSB that results from mechanical debarking. In the proposed rule, we noted that research on mortality rates for two beetles that are of a size similar to PSB, *Ips typographicus* and *I. calligraphicus*, indicates that mechanical debarking produces mortality rates of 93 percent and 99 percent, respectively, for those beetles. The commenter expressed concern that the number of beetles surviving the mechanical debarking process would be sufficient to spread PSB to areas that are now free of the pest.

As we explained in the proposed rule, during the winter, 97 percent of the PSB are under the bark in the bottom 4 inches of the tree trunk. As described in the proposed rule and in this final rule, we will require that trees be harvested no less than 4 inches above the ground level in order to leave 97 percent of the beetles behind. The log then must be debarked using either a Rosser head debarker or a ring debarker. Either of these debarkers can be expected to kill 93 percent of any beetles present. Thus, the combination of harvesting trees at least 4 inches above ground level and debarking the harvested logs can be expected to kill approximately 99.8 percent of the beetles that were present before the log was harvested. This is an extremely low survival rate.

Also, as we explained in the proposed rule, debarking is just one step in the management method. After being removed from the log, the bark must be either ground into pieces of 1 inch in diameter or less, or composted according to the specific procedure described in the proposed rule and this final rule. Research and testing have shown that either grinding or composting is sufficient to mitigate the risk of spreading PSB via the interstate movement of pine bark.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

We have used all available data to estimate the potential economic effects of this rule. However, some of the data we believe would be helpful in making this determination have not been available. Specifically, data are not available on the costs of stump cutting, debarking, bark grinding, and composting processes that serve as components of the management plan described in the rule. In our proposed rule, we asked the public to provide such data. In addition, we invited the public to comment on the potential effects of the proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. However, we did not receive any additional information or data in response to those requests.

This final rule amends the PSB regulations to allow pine bark products to be moved interstate from quarantined areas during the shoot feeding stage (July 1 through October 31) of the PSB's

life cycle without treatment. We are making this change because PSB is not present in pine bark products during this stage. We are also establishing a management method to allow pine bark products to be moved interstate from quarantined areas during the overwintering stage (November 1 through March 31) and the spring flight stage (April 1 through June 30) of the PSB's life cycle.

The regulations have required that pine bark products be fumigated with methyl bromide before a certificate can be issued allowing the interstate movement of pine bark products from a quarantined area into a nonquarantined area. The pine logging and processing industry has not considered fumigation with methyl bromide a viable treatment option due to its costs.

This rule establishes a pine bark product management method under which a certificate would be issued for the interstate movement of pine bark products from a quarantined area without the use of methyl bromide. Only mechanical procedures or composting will be required, and at some times pine bark products will be allowed to move without treatment. This rule has the strong backing of the pine bark industry as well as the National Plant Board. APHIS, along with the National Plant Board, has found that the mechanical methods, composting, and specific handling procedures described in this rule will provide the necessary protection against the artificial spread of PSB into noninfested areas.

The groups affected by this action would be any logging, sawmill, paper mill, wood chip-energy, and wood chip-mulch operations in the 444 counties currently quarantined because of PSB.[1] This rule will benefit all of these operations, allowing them to move pine bark products out of a quarantined area without the economic burden of first fumigating the bark products with methyl bromide.

States in the northeast region, specifically Maine, New Hampshire, New York, and Vermont, will benefit from this regulation due to the significant contribution the forest industry makes to their economies. According to a study published by the North East State Foresters Association in March 2001, forest-based manufacturing in this 4-State region provides employment for almost 97,000 people and generates $15.7 billion annually in receipts.[2]

The forest industry relies heavily on the wood chip processors to remove waste bark. The waste pine chips are used for landscaping material, burned to produce energy, or used to produce paper. Not only do the sawmill and logging operations benefit from this waste removal, but the wood chip industry is able to package and sell the bark to consumers for landscaping needs. Turning this waste into mulch or other products is financially and environmentally beneficial to the forest industry and consumers.

Treatment Costs

Putting aside the environmental impact of using methyl bromide and the consumer's possible reluctance to purchase mulch treated with methyl bromide, the treatment costs alone of fumigation with methyl bromide are prohibitive. The average cost of fumigating a 48-foot tractor-trailer loaded with mulch with methyl bromide according to the treatment schedule in § 301.50–10(a) is estimated to be $1,435.[3] Considering that a 48-foot tractor trailer holds between 82 and 96 yards of mulch, the cost of fumigation with methyl bromide is approximately $14.95 to $17.50 per yard.

The treatment costs are so high that the wood chip industry is unable to absorb these costs, as pine mulch retails for $16 a yard. The wood chip industry would have to pass these treatment costs on to consumers, approximately doubling the retail price of mulch to $32 per yard. Wood chip processors in areas quarantined for PSB are unable to compete with wood chip processors in nonquarantined areas due to the treatment costs. Sawmill and logging operations are forced to dispose of the wood chips themselves.

Precise cost estimates for the management plan for pine bark products could not be obtained. However, for 4 months of the year, pine bark products will be able to be moved without restrictions. With regard to the other mitigations that would be required in the pine bark products management plan, most loggers already cut pine trees more than 4 inches above the stump, and most pine logs are already debarked using a mechanical debarker, meaning that the costs associated with these procedures should be low, if they impose any new burden at all. Pine bark mulch is typically made either by bark grinding or composting; without data on bark processors' current bark grinding and composting procedures, it is difficult to estimate what, if any, costs would be associated with implementing the management method for pine bark processors. However, we believe that any additional costs would still be far lower than the cost of fumigation with methyl bromide.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their regulations on small entities. The Small Business Administration (SBA) has established size criteria using the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm.

Most businesses that will be affected by this rule belong to one of two NAICS categories: (1) Logging firms, which fall within NAICS category 113310, "Logging," and (2) sawmills and other wood processing firms, which would fall within NAICS category 113310, "Sawmills." Firms in both of these categories are considered by the SBA to be small entities if they employ fewer than 500 people. Using the data provided by the National Agriculture Statistics Service's 2002 Census of Agriculture, we can assume that most firms in these categories would be considered small entities. We do not have any specific data regarding how many firms that will be affected by this rule are considered to be small entities; we invited public comment on this issue in the proposed rule and did not receive any new information.

We believe that this rule will have a positive impact on all affected entities, because we believe the management method described in the rule would dramatically lower treatment costs for pine bark products derived from trees during 8 months of the year and eliminate such costs entirely for pine bark products derived from trees felled during 4 months of the year.

This final rule contains no new information collection or recordkeeping requirements (see "Paperwork Reduction Act" below).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

[1] Under § 301.50–3, part or all of 13 States are quarantined for PSB: Illinois, Indiana, Maine, Maryland, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Vermont, Virginia, West Virginia, and Wisconsin.

[2] The Economic Importance of the Northeast's Forests, North East State Foresters Association (NESFA), March 2001.

[3] Based on information provided by the Michigan State University, Agricultural Extension Service. Cost includes labor and materials; sealing of 48-ft. trailer; monitoring of fumigant (4–5 lbs. per 1,000 cubic ft.); aeration of trailer; and loading and unloading of pine mulch and nuggets.

State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 30—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3. Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–1, a new definition of *pine bark products* is added in alphabetical order to read as follows:

§ 301.50–1 Definitions.

* * * * *

Pine bark products. Pieces of pine bark including bark chips, bark nuggets, bark mulch and bark compost.

* * * * *

§ 301.50–2 [Amended]

■ 3. In § 301.50–2, paragraph (a) is amended by removing the words "Bark nuggets (including bark chips)" and adding the words "Bark products" in their place.

■ 4. Section 301.50–5 is amended as follows:

■ a. In paragraph (a)(1)(i), by adding the words ", or, if pine bark products, produced according to the requirements of the management method in § 301.50–10(d) of this subpart" after the word "subpart".

■ b. In paragraph (a)(1)(v), by removing the words "July through October" and adding the words "July 1 through October 31" in their place; and by adding the words "or if the regulated article is pine bark products produced from a tree felled and debarked during the period of July 1 through October 31" before the word "; and".

■ c. By revising paragraph (a)(2)(iii) to read as set forth below.

§ 301.50–5 Issuance and cancellation of certificates and limited permits.

(a) * * *

(2) * * *

(iii) The pine log with pine bark attached, pine lumber with bark attached, or pine stump from a tree felled during the period of July 1 through October 31, or the pine bark products produced from a tree felled and debarked during the period of July 1 through October 31, will be shipped interstate from the quarantined area during the period of July 1 through October 31 of the same year in which the source tree was felled; and

* * * * *

■ 5. Section 301.50–10 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. In paragraph (a), by removing the words "pine bark nuggets (including bark chips)" and adding the words "pine bark products" in their place.

■ c. By adding a new paragraph (d) to read as set forth below.

§ 301.50–10 Treatments and management method.

* * * * *

(d) *Management method for pine bark products.* The following procedures are authorized for use with pine bark products derived from white pine (*Pinus strobus*), Scotch pine (*P. sylvestris*), red pine (*P. resinosa*), and jack pine (*P. banksiana*) trees. Pine bark products will only be considered to have been produced in accordance with this management method if the following procedures are followed:

(1) For pine bark products produced from trees felled during the period November 1 through March 31:

(i) The trees must be harvested at a height of 4 inches or more above the duff line; and

(ii) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(iii) For Scotch pine, red pine, and jack pine, the bark must either be ground into pieces of 1 inch or less in diameter or composted in accordance with the procedure in paragraph (d)(3) of this section.

(2) For pine bark products produced from trees felled during the period April 1 through June 30:

(i) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(ii) The bark must either be ground into pieces of 1 inch or less in size or composted in accordance with the procedure in paragraph (d)(3) of this section.

(3) Composting for pine bark products for the management method in this paragraph (d) must be performed as follows:

(i) The pile of pine bark to be composted must be at least 200 cubic yards in size; and

(ii) The compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days; and

(iii) After the 4-day period is completed, the outer layer of the compost pile must be removed to a depth of 3 feet; and

(iv) A second compost pile must be started using the cover material previously removed as a core. Core material must be removed from the first pile and used to cover the second compost pile to a depth of 3 feet; and

(v) The second compost pile must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

(vi) Previously composted material generated using this procedure may be used as cover material for subsequent compost piles. A compost pile that uses previously composted material must remain undisturbed until the interior temperature of the pile reaches 120 °F (49 °C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

Done in Washington, DC, this 14th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2626 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 04–065–2]

Tuberculosis; Reduction in Timeframe for Movement of Cattle and Bison From Modified Accredited and Accreditation Preparatory States or Zones Without an Individual Tuberculin Test

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations to reduce, from 6 months to 60 days, the period following a whole herd test during which animals may be moved interstate from a modified accredited State or zone or from an accreditation preparatory State or zone without an individual tuberculin test. The interim rule was necessary due to our determination that the 6-month period during which individual tuberculin tests have not been required is too long given the risks of exposure to tuberculosis that exist in modified accredited and accreditation preparatory States or zones, especially those States or zones where there are wildlife populations affected with tuberculosis.

DATES: Effective on March 20, 2006, we are adopting as a final rule the interim rule that became effective on May 18, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD, 20737–1231, (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable granulomatous disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

In an interim rule effective May 18, 2005, and published in the **Federal Register** on May 24, 2005 (70 FR 29579–29582, Docket No. 04–065–1), we amended the bovine tuberculosis regulations in 9 CFR part 77 by reducing from 6 months to 60 days the period following a whole herd test during which cattle and bison may be moved interstate from a modified accredited State or zone or an accreditation preparatory State or zone without an individual tuberculin test.

Comments on the interim rule were required to be received on or before July 25, 2005. We received two comments by that date. The comments were from a State agricultural agency, which fully supported the rule, and from a private citizen who stated that the timeframe should be reduced to 10 days, but did not provide any explanation or justification for this suggested reduction.

As we discussed in the interim rule, we believe reducing the period from 6 months to 60 days will be sufficient to lower the potential risk of movement of infected animals and decrease the likelihood of tuberculosis transmission. Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

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

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 70 FR 29579–29582 on May 24, 2005.

Done in Washington, DC, this 14th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2627 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2006–6]

Definitions of "Solicit" and "Direct"

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of rules to Congress.

SUMMARY: The Federal Election Commission is revising its definitions of the terms "to solicit" and "to direct" for its regulations on raising and spending Federal and non-Federal funds. The new definition of "to solicit" encompasses written and oral communications that, construed as reasonably understood in the context in which they are made, contain a clear message asking, requesting, or recommending, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide something of value. Mere statements of political support and mere guidance as to the application of the law are not included. The revised definition also contains a list of examples, to provide practical guidance to Federal candidates, officeholders, political committee officials, and others. The new definition of "to direct" focuses on guidance provided directly or indirectly to a person who has expressed an intent to make a contribution, donation, or transfer of funds. Further information is provided in the supplementary information that follows.

DATES: The revised rules at 11 CFR 300.2(m) and (n) are effective on April 19, 2006.

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

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107–155, 116 Stat. 81 (2002), amended the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the "Act"), by adding to the Act new restrictions and prohibitions on the solicitation, receipt, and use of certain types of non-Federal funds (*i.e.*, funds that do not comply with the amount limits, source prohibitions, and reporting requirements of the Act),[1] which are commonly referred to as "soft money."

The terms "to solicit" and "to direct" are central to three core provisions of

[1] *See* 11 CFR 300.2(k).

BCRA. First, national parties "may not solicit * * * or direct" non-Federal funds. 2 U.S.C. 441i(a)(1). Second, national, State, district, and local party committees may not solicit any non-Federal funds or direct any donations to certain entities organized under chapter 501(c) or 527 of the Internal Revenue Code. 2 U.S.C. 441i(d); 11 CFR 300.11 and 300.37. Third, Federal candidates and officeholders "shall not * * * solicit" or "direct" funds in connection with any election unless the funds comply with the Act's contribution limits and prohibitions. 2 U.S.C. 441i(e)(1)(A) and (B); *see also* 2 U.S.C. 441i(e)(2)–(4). In addition, BCRA added prohibitions on soliciting contributions or donations from foreign nationals and on fraudulent solicitations. 2 U.S.C. 441e(a)(2) and 441h(b). Neither BCRA nor FECA contains a definition of either "to solicit" or "to direct."

On July 29, 2002, the Commission promulgated regulations implementing BCRA's new limits on raising and spending non-Federal funds by party committees, and Federal candidates and officeholders. *Final Rules and Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064 (July 29, 2002) ("*Soft Money Final Rules*"). The 2002 rules defined "to solicit" as "to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary." 11 CFR 300.2(m) (2002). The 2002 rules defined "to direct" as "to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary." 11 CFR 300.2(n)(2002).

In *Shays* v. *FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004) ("*Shays District*"), *aff'd*, *Shays* v. *FEC*, 414 F.3d 76 (D.C. Cir. 2005) ("*Shays Appeal*"), *reh'g en banc denied* (Oct. 21, 2005), the District Court held that the Commission's definitions of "to solicit" and "to direct" did not survive the *second* step of *Chevron* review.[2] *Shays District* at 77, 79. The Court of Appeals for the D.C. Circuit affirmed the District Court's decision on slightly different grounds, holding that the Commission's definitions of "to solicit" and "to direct" did not survive the *first* step of *Chevron* review. *Shays Appeal* at 105–07.

The Court of Appeals found that the Commission's definition of "to solicit" was limited to explicit, direct requests for money and, consequently, left "unregulated a 'wide array of activity' * * * that the term 'solicit' could plausibly cover." *Id.* at 104. Specifically, the Court of Appeals determined that the Commission's definition excluded implicit requests for money, impermissibly required that a candidate or officeholder use certain "magic words" to satisfy the definition, and did not allow for any consideration of the non-verbal actions accompanying a communication or any other aspect of the context in which the communication was made. *Id.* at 104–106.

As to the term "to direct," the District Court held that the Commission's definition was not a permissible construction of the statute because the Commission's definition of "to direct" did not comport with any dictionary definition of the term and was subsumed within the definition of "to solicit." *Shays District* at 76 and 77. Subsequently, the Court of Appeals held that the Commission's definition of "to direct" was invalid because it effectively defined "to direct" as "to ask" (namely, to ask someone who has expressed an intent to make a contribution or donation) and thus, like the definition of "to solicit" and contrary to Congress's intent, limited "to direct" to explicit requests for funds. The Court of Appeals did not reach the question of whether "to avoid statutory redundancy, 'direct' must mean more than 'ask in response,' when 'solicit' means 'ask' plain and simple." *Shays Appeal* at 107.

The Court of Appeals affirmed the District Court's order that had remanded both definitions to the Commission for further action consistent with its opinion. *Id.*

In response to the Court of Appeals' decision, the Commission published a Notice of Proposed Rulemaking ("NPRM") on September 28, 2005 in which it sought comment on a number of different ways in which the definitions of "to solicit" and "to direct" could be amended, which are discussed below. 70 FR 56599 (September 28, 2005). The comment period closed on October 28, 2005. The Commission received written comments from twelve commenters.[3] The Commission held a public hearing on November 15, 2005, at which seven witnesses testified. The comments and a transcript of the public hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml#def_solicit*.[4]

While the Commission believes its regulations have been construed more narrowly than intended, it is issuing final rules adopting a revised definition of "to solicit" that (1) encompasses both explicit *and* implicit written or oral communications that contain clear messages asking, requesting, or recommending that funds or anything of value be provided, (2) provides an objective test that requires that written or oral communications be reasonably construed in the context in which they are made, and (3) does not rely on any "magic words" or specific statements. The Commission is also adopting a revised definition of "to direct" that distinguishes between "to solicit" and "to direct" by defining the latter as "to guide." These new definitions further the purpose of BCRA in preventing corruption or the appearance of corruption and they provide guidance that is designed to address the practical, real-life situations that Federal candidates, officeholders, and others face on a daily basis.

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 March 14, 2006.

Explanation and Justification

I. 11 CFR 300.2(m)—Definition of "To Solicit"

A. The Revised Definition

The Commission is revising 11 CFR 300.2(m) by providing a modified version of the rule proposed in the NPRM.[5] By using the phrase "ask,

[2] The first step of the *Chevron* analysis, which courts use to review an agency's regulations, asks whether Congress has directly spoken to the precise questions at issue. The second step considers whether the agency's resolution of an issue not addressed in the statute is based on a permissible construction of the statute. *See Shays District* at 51–52 (citing *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council*, 467 U.S. 837, 842–43 (1984).)

[3] These included a comment from the Internal Revenue Service stating that "the proposed rules do not pose a conflict with the Internal Revenue Code or the regulations thereunder."

[4] For purposes of this document, the terms "comment" and "commenter" apply to both written comments and oral testimony at the public hearing.

[5] In the NPRM, the Commission proposed defining "to solicit" as "to ask, suggest, or recommend that another person make a contribution, donation, transfer of funds, or

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request, or recommend, explicitly or implicitly," the revised definition of "to solicit" is properly broad in scope to prevent corruption or the appearance of corruption. 11 CFR 300.2(m). At the same time, the definition sets forth an objective test that focuses on the communications in context, and does not turn on subjective interpretations by the person making the communication or its recipient. Specifically, the definition provides:

> [T]o solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.

(1) By including the phrases "ask, request, or recommend, explicitly or implicitly" and "directly or indirectly," the revised definition of "to solicit" furthers the purposes of BCRA by covering not only communications that explicitly or directly request contributions or donations, but also communications that implicitly or indirectly seek to elicit a contribution or donation

The Commission is including the phrases "explicitly or implicitly" and "directly or indirectly" in the revised definition of "to solicit" to clarify that the definition of "to solicit" covers not only communications that *explicitly or directly* request contributions or donations, but also communications that *implicitly or indirectly* seek to elicit a contribution or donation, and does not depend on the use of certain "magic words."

Importantly, the revised definition implements and reinforces BCRA's direct prohibitions on soliciting or directing non-Federal funds. The revised definition ensures that candidates and parties may not, implicitly or indirectly, raise unregulated funds for either themselves or, subject to statutory exceptions, "friendly outsiders." *See Shays Appeal* at 106. By covering implicit and indirect requests and recommendations, the new definition forecloses parties and candidates from using circumlocutions "that make their intention clear without overtly 'asking' for money." *Id.* The revised definition of "to solicit" also squarely addresses the central concern of the Court of Appeals in *Shays* that "indirect" as well as "direct" requests for funds or anything of value must be covered. *See Shays* Appeal at 105. The changes to the definition also ensure that it encompasses communications such as the following, which were cited by the Court of Appeals: (1) "It's important for our State party to receive at least $100,000 from each of you in this election" and (2) "X is an effective State party organization; it needs to get as many $100,000 contributions as possible." *Shays Appeal* at 103.

One group of commenters urged the Commission to adopt the language proposed in the NPRM, which defined "to solicit" as "to ask, suggest, or recommend" that another person provide funds. Other commenters, however, opposed the inclusion of this phrase because of its potential to encompass words or actions that do not convey a clear message asking, requesting, or recommending that funds or other things of value be provided. The Commission is not including "to suggest." The word "suggest" is unnecessary because the revised definition already covers "implicit" statements. The Commission also concludes that including "suggest" could contribute to vagueness rather than clarifying the statutory restriction. The term "suggest" is generally defined to include meanings that imply a concrete proposal for action, but also to include a mental process of association. *The American Heritage College Dictionary* 1358 (3d ed. 1997). The former constitutes a solicitation, but the latter definition, encompassing a largely or wholly subjective process, does not. Including a term which has a range of meanings, some of which are intended to be encompassed within the regulatory definition of "solicit" but others of which necessarily are excluded, is unhelpful in defining and explaining the reach of the solicitation prohibition. Although the revised definition does not include "to suggest," the Commission notes that a statement such as "I suggest that you give $30,000" would nonetheless be an implicit request for funds covered by the definition.

(2) A solicitation is a communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person provide funds or something of value, and a solicitation does not encompass mere statements of political support or mere guidance about a particular law

Federal candidates and officeholders, as a natural consequence of campaigning or carrying out their official duties, are continuously involved in meeting and greeting voters and potential donors and promoting legislative agendas. The sheer number of interactions and similarity in the messages for these different purposes may sometimes give rise to situations where a candidate's request for electoral or legislative support is misconstrued as a request for financial support. *See Thomas* v. *Collins*, 323 U.S. 516, 534–35 (1945) ("[g]eneral words create different and often particular impressions on different minds. No speaker, however careful, can convey exactly his meaning, or the same meaning, to the different members of an audience * * * [I]t blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim"). For example, Federal candidates and officeholders routinely thank attendees for their support at campaign rallies and other events. Absent a requirement that a communication contains a clear message asking, requesting, or recommending that another person provide funds or something of value, such a statement might be inappropriately captured by the definition of "to solicit."

In addition, the revised definition of "to solicit" in 11 CFR 300.2(m) covers only those communications that ask, request or recommend that a contribution or donation be provided, and does not cover mere statements of political support or mere statements seeking political support, such as a request to vote for, or volunteer on behalf of, a candidate. As noted above, the solicitation can be made "explicitly or implicitly," or "directly or indirectly," so the definition unequivocally extends beyond overt requests for money or in-kind contributions.

Moreover, the Commission emphasizes that the definition of "to solicit" is not tied in any way to a candidate's use of particular "magic words" or specific phrases. The revised definition merely requires that whatever communication is used must contain a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. *See Shays Appeal* at 106 (regulations must encompass a communication that "makes [a candidate's or political party's] intention *clear* without overtly 'asking'

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otherwise provide anything of value, whether it is to be made or provided directly or through a conduit or intermediary. A solicitation is a written or oral communication, whether explicit or implicit, construed as a reasonable person would understand it in context." The NPRM also sought comment on five additional alternatives for defining "to solicit."

for money * * * if imaginative advertisers are able to make their meaning clear without employing express terms like 'vote for' and 'vote against,' savvy politicians will surely be able to convey fundraising desires without explicitly asking for money.") (emphasis added).

For example, at a ticket-wide rally, the candidate says: "It is critical that we support the entire Democratic ticket in November." Such a statement would not, by itself, constitute a solicitation because the statement is reasonably interpreted as an appeal for continuing political, rather than financial, support. *See* 11 CFR 300.2(m)(3)(v). On the other hand, a solicitation would result where a candidate states, "I will be very pleased if we can count on you for $10,000." 11 CFR 300.2(m)(2)(xii). Although implicit, the solicitation of funds is nevertheless clear.

(3) By specifying that a communication must be construed as reasonably understood in the context in which it is made, the definition of "to solicit" contains an objective test that takes into account all appropriate information and circumstances while avoiding subjective interpretations

The revised definition retains the requirement that a communication must contain some affirmative verbalization, whether oral or in writing, to be a solicitation. In addition, the Commission believes that it is necessary to reasonably construe the communication in context, rather than hinging the application of the law on subjective interpretations of the Federal candidate's or officeholder's communications or on the varied understandings of the listener. The revised definition reflects the need to account for the context of the communication and the necessity of doing so through an objective test. *See* 11 CFR 300.2(m).

The context of a communication is often important because words that would not, by their literal meaning, convey a solicitation, may in some contexts be reasonably understood as one. Conversely, words that would by their plain meaning normally be understood as a solicitation, may not be a solicitation when considered in context, such as when the words are used as part of a joke or parody. The following example illustrates the importance of the context in which a communication is conveyed: Fundraiser introduces Donor to Senator, saying: "Senator, I'd like you to meet Joe Donor. Joe's been a longtime supporter of X Organization." Senator: "Joe, it's great to meet you. I really appreciate your support of X Organization's fine work." At this point, the Senator has merely expressed political support for X Organization; he has not made a solicitation. Fundraiser continues: "I've been trying to persuade Joe to commit to giving X another $50,000. Wouldn't that be great, Senator?" The Senator replies: "Joe, X is a very worthy organization. It's always been very helpful to me." In the context of the entire conversation, and particularly, the Fundraiser's last statement and question, the Senator's response now constitutes a solicitation.

Despite the potential for differing interpretations of candidate communications, the Act imposes stiff penalties, including potential criminal liability, on a Federal candidate or officeholder who is found to knowingly and willfully violate the prohibition on the solicitation of non-Federal funds. 2 U.S.C. 437g(d) and 441i(e). Moreover, as one commenter warned, complaints are often filed for purely partisan political reasons, so it is likely that all public appearances would be dissected by opponents or interest groups to find a few phrases or words that could be perceived as suggesting that members of the audience make a contribution or donation; this, in turn, would form the basis for filing a complaint with the Commission. To address these concerns, the Commission has historically sought to develop clear standards that provide adequate notice of whether communications constitute solicitations; anything less would place Federal candidates, officeholders, and party officials at the mercy of the various understandings of third parties. Accordingly, for a solicitation to be made under revised 11 CFR 300.2(m), the communication must be "construed as reasonably understood in the context in which it is made." The mere fact that the recipient of a communication subjectively believes that he or she has been solicited is not a sufficient basis for finding that a solicitation has taken place. *See, e.g., Phantom Touring, Inc.* v. *Affiliated Publications,* 953 F.2d 724, 727 (1st Cir. 1992) ("For example, a theater critic who wrote that, "The producer who decided to charge admission for that show is committing highway robbery," would be immune from liability because no reasonable listener would understand the speaker to be accusing the producer of the actual crime of robbery.") Rather, under revised 11 CFR 300.2(m), the Commission's objective standard hinges on whether the recipient should have reasonably understood that a solicitation was made. This will allow Federal candidates and officeholders and political party officials to determine with reasonable certainty whether a communication is a solicitation.

The conduct of the speaker or other persons involved in a communication may also be relevant to the meaning of a written or oral communication in certain situations. For example, the following exchange would result in a solicitation by the candidate: "The head of Group X solicits a contribution from a potential donor in the presence of a candidate. The donor asks the candidate if the contribution to Group X would be a good idea and would help the candidate's campaign. The candidate nods affirmatively." *See* 11 CFR 300.2(m)(2)(xvi). Therefore, revised 11 CFR 300.2(m) expressly provides that the context of a written or oral communication "includes the conduct of persons involved in the communication."

In the NPRM, the proposed definition of "to solicit" also included an objective standard: the communication was to be construed "as a reasonable person would understand it in context." 70 FR at 56606. All of the commenters agreed that an objective standard was appropriate. Some of the commenters disagreed over the particular language of the standard, but one commenter accurately observed that the debate over the language of the objective standard was "a little bit of a kind of false dilemma, because * * * inevitably the Commission is going to construe its regulations by a reasonable understanding of what the words mean * * * whether you put it in the rule or not, I think that's essentially the only sensible way to go about it."

(4) Because it focuses on the delivery of contributions or donations, rather than how a solicitation is made, the 2002 language relating to the provision of funds or things of value through conduits or intermediaries is superfluous

The 2002 definition of "to solicit" stated that a solicitation would result where "the contribution, donation, transfer of funds, or thing of value is to be made or provided directly, or through a conduit or intermediary." *See* 11 CFR 300.2(m) (2002). This statement focuses on the delivery of the funds or thing of value after the solicitation has taken place, as opposed to how a solicitation is made. The Commission has decided to remove that language because it is unnecessary. It is true that a Federal candidate, officeholder, or other person would make a solicitation by asking, requesting, or recommending that funds be provided to himself or herself or to another entity, regardless of whether the funds are ultimately delivered directly through a conduit or

intermediary or some other method. However, the delivery of funds is already addressed through other provisions in the Act and Commission regulations, such as the Commission's earmarking rules at 11 CFR 110.6 implementing 2 U.S.C. 441a(a)(8).

B. Other Alternatives Proposed in the NPRM

In the NPRM, the Commission sought comment on five alternatives for defining "to solicit" in addition to the proposed rule. Of these five alternatives, the only one that received any support from commenters was Alternative Three, which was to retain the 2002 definition of "to solicit" while revising the Explanation and Justification to explain that "to solicit" includes implied or indirect requests for funds. Commenters who supported Alternative Three did so primarily on three grounds. First, notwithstanding the Court of Appeals' interpretation of the Commission's 2002 definition of "to solicit," some of those seeking to comply with the Commission's solicitation rules had understood that definition to cover not only express, but also implied or indirect requests for funds. Second, retaining the 2002 rule would create the least instability and avoid the uncertainty associated with the introduction of new terms. Lastly, a revised Explanation and Justification would provide notice that this definition will be interpreted in accordance with the *Shays* decisions. However, other commenters opposed retaining the 2002 definition of "to solicit" because the rule would continue to be construed to be overly narrow and therefore would not comply with the *Shays* decisions, even if explained differently.

Although the Commission agrees with the commenters that the 2002 definition of "to solicit" was broader than the Court of Appeals understood it to be, the Commission has decided not to retain the 2002 definition because, given the fact that both the District Court and the Court of Appeals construed the 2002 definition to be narrow, there is a significant lack of certainty regarding the scope of that definition. Thus, the most straightforward and effective way of removing ambiguity and providing the necessary guidance to those subject to BCRA is to clarify the scope of the definition of "to solicit" in the regulation itself. Moreover, because the Court of Appeals in *Shays Appeal* struck down the 2002 definition under the first step of *Chevron*,[6] the court might find that retaining that definition of "to solicit" as "to ask," even with a revised Explanation and Justification, is not fully responsive to the court's ruling.

Regarding the other alternatives, none of which received any support from commenters, Alternative One would have modified the revised definition of "to solicit" proposed in the NPRM by excluding the requirement that a communication be construed objectively in the context in which it is made. As explained above, the Commission believes it is important to specify in the definition of "to solicit" that a communication must be "construed reasonably in the context in which it is made" in order to make clear that the determination of whether a communication is a solicitation is an objective test and does not turn on subjective interpretations of the communication.

Alternative Two would have modified the 2002 definition to make clear in the regulation itself that "to solicit" covers not only explicit requests or communications that use certain "magic words" but also indirect, implied requests for contributions or donations. This alternative would have provided that "to solicit means to ask, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." Alternative Two did not include the words "request" or "recommend" or the requirement that the communication be construed objectively and in context. The Commission did not choose this alternative for two reasons. First, inclusion of the words "request" and "recommend" are more effective in putting those subject to BCRA's restrictions on notice that indirect requests for funds are covered by the revised definition of "to solicit." Second, incorporation of the requirement that the communication be construed objectively and in context is important for the reasons discussed above.

Alternative Four was premised on the Commission prevailing on a rehearing by the full Court of Appeals. Alternative Four would have adopted a definition that limits solicitations to explicit requests for contributions or donations. Because the Commission's petition for a rehearing *en banc* was denied, this alternative is no longer viable.

Alternative Five was to provide no definition of "to solicit" in the rules. Under this alternative, those seeking guidance would have had to rely on the Court of Appeals decision, previous advisory opinions, and future applications by the courts and the Commission. Although one commenter indicated that this alternative would not be inconsistent with the Court of Appeals decision, another commenter asserted that a case-by-case approach would not provide adequate notice and guidance in this area. The Commission believes that defining the term "to solicit" is the most straightforward and effective way of providing guidance.

C. Disclaimer Requirements for Attendance and Participation at Fundraising Events

In the NPRM, the Commission sought comment regarding Advisory Opinions 2003–03 (Rep. Eric Cantor), 2003–05 (National Association of Home Builders), and 2003–36 (Republican Governors Association). These advisory opinions permitted Federal candidates or officeholders to attend and participate in a fundraising event for non-Federal funds held by State and local candidates, or by non-Federal political organizations, so long as the solicitations made by the Federal candidate or officeholder included, or were accompanied by, certain disclaimers.[7]

The Commission sought comment on whether the principles enunciated in these advisory opinions should be incorporated into the Commission's regulations or should be superseded. All of the commenters who addressed the application of the disclaimer requirements, as articulated in the advisory opinions, agreed that Federal candidates and officeholders should be permitted to attend and participate in these non-Federal fundraising events, subject to the disclaimer guidelines. One commenter favorably characterized the disclaimers as a "safe harbor" enabling Federal candidates to participate and speak at such events "in a way that complies with the statute." Another commenter warned that superseding the advisory opinions would "chill" the activities of Federal candidates and officeholders at the State and local, or "grassroots," level.

Some commenters urged the Commission to incorporate the disclaimers into regulations and observed that the advisory opinions provided detailed guidance "without having caused any known abuse or confusion."

The incorporation of the disclaimer requirements into a rule applicable to non-party committee fundraisers was

[6] *See* note 2, above.

[7] This analysis has not been applied to appearances and speeches by Federal candidates and officeholders at State, district, or local party fundraising events because the Act and Commission regualtions allow those individuals to attend and speak at such events without restriction or regulation. 2 U.S.C. 441i(e)(3); 11 CFR 300.64.

first addressed in the rulemaking on Federal candidate solicitations at party fundraising events. *See Revised Explanation and Justification for Final Rules on Candidate Solicitation at State, District, and Local Party Fundraising Events,* 70 FR 37649 (June 30, 2005) ("*Party Committee Events Final Rules*"). During the hearings on that rulemaking, a commenter observed that the disclaimer requirements are "understood" and "the community is complying with them," a view echoed in the current rulemaking. In the Explanation and Justification for the Party Committee Events Final Rules, the Commission indicated that it was not necessary "to initiate a rulemaking to address the issues in Advisory Opinions 2003–03, 2003–05, and 2003–36 at this time." 70 FR at 37654. The Commission continues to stand by that determination.

D. 11 CFR 300.2(m)(1)—Types of Communications That are Solicitations

Several commenters urged the Commission to specifically address communications that include reply envelopes, phone numbers, or Web pages dedicated to facilitating the making of contributions or donations. The Commission is therefore adding new 11 CFR 300.2(m)(1) to specify three types of "solicitation" that result from components of a communication that are intended to provide instructions about how to contribute or otherwise facilitate the making of a contribution. Specifically, paragraph (m)(1) provides that the following are solicitations: (1) A written communication that provides a method of making a contribution or donation, such as a reply card or envelope that permits a contributor or donor to indicate the amount of a contribution, regardless of the other text of the communication; (2) a communication that provides instructions on how or where to send contributions or donations, including providing a phone number specifically dedicated to facilitating the making of contributions or donations; and (3) a communication that identifies a Web address where the Web page displayed is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page. *See* 11 CFR 300.2(m)(1)(i)–(iii).

However, 11 CFR 300.2(m)(1)(ii) and (iii) expressly state that a communication does not become a solicitation simply by providing a mailing address, phone number, or Web address unless the address or number is specifically dedicated to facilitating the making of a contribution or donation. This clarification is intended to ensure that an organization's attempt to publicize its own contact information for non-fundraising purposes will not be treated as a solicitation.

E. Examples of Solicitations

In order to provide Federal candidates and officeholders, and political committees and others operating under BCRA, with additional guidance on how the new standard will be applied, the Commission proposed, in the NPRM, to incorporate into either the final rule or the Explanation and Justification examples of communications that are solicitations, and examples of communications that are not. The NPRM sought comment on whether some or all of these examples should be included in the regulation itself or in the Explanation and Justification.

The commenters generally agreed that *all* the examples set out in the NPRM should be included. Some commenters believed that the examples should be included in the Explanation and Justification while others expressed a preference for including the examples in the regulation itself. Because the Commission recognizes that Federal candidates and officeholders require clear guidance that can be readily applied in practice to their day-to-day activities, the Commission concludes that the examples are such an integral component of the definition of "to solicit" that they are best included in the regulation itself. The inclusion of the examples in the rule makes these examples more accessible to those seeking to comply with the Commission's rules.

Similar versions of some of these examples were set forth in the NPRM. Several of these examples have been altered slightly to provide further clarity. Furthermore, given the unanimous agreement of the commenters that examples are helpful in applying the rule in real-life situations, the Commission is providing several new examples in addition to those included in the NPRM. The Commission emphasizes that the lists are integral to the application of the definition of "to solicit" in particular situations, but are not intended to be exhaustive.

Revised 11 CFR 300.2(m)(2) lists several communications that *are* solicitations. Some of these examples represent explicit requests, such as "Please give $100,000 to Group X." 11 CFR 300.2(m)(2)(i). Other examples are implicit, such as "X is an effective State party organization; it needs to obtain as many $100,000 donations as possible," and "Giving $100,000 to Group X would be a very smart idea." 11 CFR 300.2(m)(2)(iv) and (v). Several of the examples also demonstrate how a simple statement can be a solicitation in a particular context, such as the following: A candidate hands a potential donor a list of people who have contributed to a group and the amounts of their contributions. The candidate says, "I see you are not on the list." 11 CFR 300.2(m)(2)(x).

In contrast, 11 CFR 300.2(m)(3) includes examples of communications that are *not*, in and of themselves, "solicitations" under the revised definition. These statements are specific to the context in which they are made, and similar statements may result in solicitations in other situations. Some of these examples consist of statements indicating general support or electoral support, rather than a clear request for funds or something of value, such as a candidate's statement of "thank you for your continuing support" at a get-out-the-vote (GOTV) rally, or "It is critical that we support the entire Democratic ticket in November" at a ticket-wide rally. *See* 11 CFR 300.2(m)(3)(iv) and (v). Other examples refer to legislative achievements, such as the following statement by a Federal officeholder: "Our Senator has done a great job for us this year. The policies she has vigorously promoted in the Senate have really helped the economy of the State." 11 CFR 300.2(m)(3)(vi).

F. 11 CFR Part 114—Corporate and Labor Organization Activity

Several regulations concerning corporate and labor organization activity in 11 CFR Part 114 use the terms "to solicit" and "solicitation" without defining them. *See, e.g.*, 11 CFR 114.5(g), 114.6, 114.7, and 114.8; *see also* 11 CFR 104.7(b)(2). The NPRM sought comment on whether the Commission should continue to leave the terms "to solicit" and "solicitation" undefined in these regulations, or whether these rules should include the same definition of "to solicit" as the regulations regarding non-Federal funds. Five commenters urged the Commission not to expand this rulemaking by promulgating definitions of "to solicit" and "solicitation" with respect to corporate and labor organization activity in 11 CFR Part 114. Because, as three of these commenters observed, a rule defining "solicitation" for 11 CFR Part 114 is not required by the *Shays Appeal*, the Commission has decided to leave the words "solicitation" and "to solicit" undefined in the regulations governing corporate and labor organization activity. The

Commission also notes that there are a number of advisory opinions that already explain what would or would not constitute a solicitation of contributions to a corporation's separate segregated fund ("SSF"). *See, e.g.*, Advisory Opinions 2003–14, 2000–07, 1999–06, 1991–03, 1988–02, 1983–38, 1982–65, and 1979–13.

G. 11 CFR 110.20(a)(6)—Foreign Nationals

The Commission's regulations at 11 CFR 110.20(a)(6) prohibiting contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals incorporate the definition of "to solicit" in 11 CFR 300.2(m). *See* 11 CFR 110.20(a)(6). The NPRM proposed to continue to use the same definition of "to solicit" for both the regulations regarding non-Federal funds and the foreign national prohibitions, but also invited comment on whether there are reasons for providing two different, independent definitions of the term. All three of the commenters who addressed this issue urged the Commission to use the same definition for both regulations. The Commission agrees, and concludes that it is appropriate to continue to use the same definition of "to solicit" for both the regulations regarding non-Federal funds and the foreign national prohibitions.

II. 11 CFR 300.2(n)—Definition of "To Direct"

The Commission is revising the definition of "to direct" in 11 CFR 300.2(n) to mean the following: " to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value. The contribution, donation, transfer, or thing of value may be made or provided directly or through a conduit or intermediary." The Commission's final rule adopts the revised definition of "to direct" proposed in the NPRM, with the additional clarification that the guidance can be provided directly or indirectly. The inclusion of "directly or indirectly" makes clear that the rule covers not only explicit guidance, but implicit guidance as well.

The final rule at 11 CFR 300.2(n) also includes the statement that "merely providing information or guidance as to the applicability of a particular law or regulation" is not direction. This statement is nearly identical to the statement included in the 2002 rule, with only technical changes intended to promote clarity in the meaning of the rule.

As indicated above, although the Court of Appeals held that the Commission's definition of "to direct" was invalid because it effectively defined "to direct" as "to ask" and thus, like the definition of "to solicit," limited "to direct" to explicit requests for funds, the court did not provide guidance on how "to direct" should be defined. However, the District Court did provide guidance. Specifically, the District Court observed that the term "to direct" has more than one meaning. It can mean "[t]o guide (something or someone)," as in to inform someone of where he or she can make a donation. The word can also mean "[t]o instruct (someone) with authority," as in to order someone to make a donation." *Shays District* at 76 (quoting Black's Law Dictionary 471 (7th ed. 1999)).

Defining "to direct" as "to guide" is consistent with BCRA's statutory language, which states in relevant part that the national committee of a political party may not "*direct to* another person a contribution, donation, or transfer of funds or anything of value." 2 U.S.C. 441i(a)(1) (emphasis added). *See also* 2 U.S.C. 441i(d) ("A national, State, district, or local committee of a political * * * party shall not solicit any funds * * * or *direct* any donations *to* [an entity] * * *.") (emphasis added). The preposition "to" following the term "to direct" in these statutory provisions would appear to indicate that Congress intended the use of "to direct" in BCRA to mean "to guide."[8] The revised definition is also fully responsive to the holding in *Shays District* by ensuring that "to solicit" and "to direct" cover distinct, though potentially overlapping, sets of communications.

Specifically, under the revised rule, "to direct" encompasses situations where a person has already expressed an intent to make a contribution or donation, but lacks the identity of an appropriate candidate, political committee or organization to which to make that contribution or donation. The act of direction consists of providing the contributor with the identity of an appropriate recipient for the contribution or donation. Examples of such direction include providing the names of such candidates, political committees, or organizations, as well as providing any other sufficiently detailed contact information such as a Web or mailing address, phone number, or the name or other contact information of a committee's treasurer, campaign manager, or finance director.

Even though, as explained above, providing a mailing address, telephone number, or Web address is, in certain circumstances, in and of itself, a solicitation, the revised definition of "to solicit" does not cover many other situations in which a Federal candidate or officeholder or party official merely provides information about possible recipients to someone who has already expressed an intent to contribute or donate. For example, Donor approaches Candidate stating: "I have $10,000 and I want to contribute it to the party for the next election. Where would it be of most use?" Candidate replies: "The New York State Republican Party." Merely providing Donor with the name of an organization to which to donate funds is not a solicitation even under the revised and expanded definition of "to solicit," but is direction under the revised definition of "to direct." Thus, even though the revised definitions of "to direct" and "to solicit" overlap, in certain circumstances, the revised definition of "to direct" also covers a substantial range of actions that are not covered by the revised definition of "to solicit," and therefore is not redundant.

The NPRM invited comments on whether the proposed definition would be too broad or too narrow, whether it would reduce the opportunities for circumvention of the Act or for actual or apparent corruption, and whether it would affect the exercise of political activity. The majority of those who commented on this issue supported the Commission's proposed revision to the rule and indicated that it would reduce the opportunities for circumvention of BCRA's soft money restrictions, and would provide sufficient guidance to candidates, officeholders, and political committees.

Some commenters asserted that because the proposed rule would apply only to persons who had already "expressed an intent" to make a contribution, donation, transfer of funds, or otherwise provide anything of value, the proposed rule would be too

[8] To define "to direct," based on the second meaning of "to direct" identified by the District Court (*i.e.*, "to instruct with authority"), would effectively subsume the definition of "to direct" within the definition of "to solicit," because "instructing with authority" is a form of asking or requesting " the terms the revised 11 CFR 300.2(m) uses to define "to solicit." In other words, to the extent that "instructing someone with authority" to make a contribution or donation is reasonably understood to be asking or requesting that a contribution or donation be made, it is already encompassed by the amended definition of "to solicit." Thus, defining "to direct" as to "instruct someone with authority" would deprive the term of a meaningful role in the regulation by subsuming it under the meaning of "to solicit." *See Shays District* at 77.

narrow and could lead to circumvention of the Act. These commenters suggested modifying the rule by removing the phrase "who has expressed an intent."

The Commission disagrees with these commenters. If the phrase "who has expressed an intent" were removed, the definition of "to direct" would include merely providing the identity of an appropriate recipient, without any attempt to motivate another person to contribute or donate funds. Thus, this rule would appear to be substantially broader than the revised definition of "to solicit" at 11 CFR 300.2(m), and would subsume that definition.

The NPRM also asked whether it was even necessary to provide a regulatory definition for the term "to direct" for the purposes of 11 CFR part 300, as long as it was made clear in the Explanation and Justification that the term means "to guide." This would have allowed the definition to develop through the advisory opinion and enforcement processes. Some commenters objected to this approach, arguing that adopting a regulatory definition adds clarity to the law and provides guidance to Federal candidates and officeholders and political party officers. Taking this into consideration, the Commission agrees that it is preferable to provide guidance, and therefore is adopting the revised definition.

In the NPRM, the Commission noted that the words "directed" and "direction" appear in the Commission's earmarking rules regarding contributions directed through a conduit or intermediary under 2 U.S.C. 441a(a)(8). *See* 11 CFR 110.6(a). Although these terms are not defined in the Act or in Commission regulations, the Explanation and Justification for 11 CFR 110.6 states that in determining whether a person has direction or control, "the Commission has considered such factors as whether the conduit [or intermediary] controlled the amount and timing of the contribution, and whether the conduit selected the intended recipient." *Final Rules for Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 FR 34098, 34108 (August 17, 1989). Thus, the word "direction" in the earmarking rules essentially means "instructing with authority." The Commission sought comment on whether this was an appropriate definition of the term "to direct" in the context of 11 CFR part 300.

Some commenters believed that this interpretation would be inconsistent with the purposes and intent of BCRA, and would improperly narrow BCRA's otherwise broad prohibition on Federal candidates, officeholders and political party committees' participation in the raising or spending of non-Federal funds. The Commission notes that, as discussed above, under this interpretation the term "to direct" would appear to be subsumed by the revised definition of "to solicit." Any activity that could be construed as "directing with authority" could also be categorized as "to ask, request or recommend" that another person make a contribution or donation. Therefore, the Commission declines to adopt a definition of "to direct" reflecting this interpretation.

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

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by these rules are the national, State, district, and local party committees of the two major political parties and other political committees, which are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. National, State, district, and local party committees and any other political committees affected by these proposed rules are not-for-profit committees that do not meet the definition of "small organization," which requires that the enterprise be independently owned and operated and not dominant in its field. State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the national and State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately.

Most other political committees affected by these rules are not-for-profit committees that do not meet the definition of "small organization." Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

To the extent that any State party committees representing minor political parties or any other political committees might be considered "small organizations," the number affected by these rules is not substantial.

Finally, candidates and other individuals operating under these rules are not small entities.

List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter C of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 300—NON-FEDERAL FUNDS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

■ 2. Section 300.2 is amended by revising paragraphs (m) and (n) to read as follows:

§ 300.2 Definitions.

* * * * *

(m) *To solicit.* For the purposes of part 300, *to solicit* means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.

(1) The following types of communications constitute solicitations:

(i) A communication that provides a method of making a contribution or donation, regardless of the communication. This includes, but is not limited to, providing a separate card, envelope, or reply device that contains an address to which funds may be sent and allows contributors or donors to indicate the dollar amount of

their contribution or donation to the candidate, political committee, or other organization.

(ii) A communication that provides instructions on how or where to send contributions or donations, including providing a phone number specifically dedicated to facilitating the making of contributions or donations. However, a communication does not, in and of itself, satisfy the definition of "to solicit" merely because it includes a mailing address or phone number that is not specifically dedicated to facilitating the making of contributions or donations.

(iii) A communication that identifies a Web address where the Web page displayed is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page. However, a communication does not, in and of itself, satisfy the definition of "to solicit" merely because it includes the address of a Web page that is not specifically dedicated to facilitating the making of a contribution or donation.

(2) The following statements constitute solicitations:

(i) "Please give $100,000 to Group X."

(ii) "It is important for our State party to receive at least $100,000 from each of you in this election."

(iii) "Group X has always helped me financially in my elections. Keep them in mind this fall."

(iv) "X is an effective State party organization; it needs to obtain as many $100,000 donations as possible."

(v) "Giving $100,000 to Group X would be a very smart idea."

(vi) "Send all contributions to the following address * * *."

(vii) "I am not permitted to ask for contributions, but unsolicited contributions will be accepted at the following address * * *."

(viii) "Group X is having a fundraiser this week; you should go."

(ix) "You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party."

(x) A candidate hands a potential donor a list of people who have contributed to a group and the amounts of their contributions. The candidate says, "I see you are not on the list."

(xi) "I will not forget those who contribute at this crucial stage."

(xii) "The candidate will be very pleased if we can count on you for $10,000."

(xiii) "Your contribution to this campaign would mean a great deal to the entire party and to me personally."

(xiv) Candidate says to potential donor: "The money you will help us raise will allow us to communicate our message to the voters through Labor Day."

(xv) "I appreciate all you've done in the past for our party in this State. Looking ahead, we face some tough elections. I'd be very happy if you could maintain the same level of financial support for our State party this year."

(xvi) The head of Group X solicits a contribution from a potential donor in the presence of a candidate. The donor asks the candidate if the contribution to Group X would be a good idea and would help the candidate's campaign. The candidate nods affirmatively.

(3) The following statements do not constitute solicitations:

(i) During a policy speech, the candidate says: "Thank you for your support of the Democratic Party."

(ii) At a ticket-wide rally, the candidate says: "Thank you for your support of my campaign."

(iii) At a Labor Day rally, the candidate says: "Thank you for your past financial support of the Republican Party."

(iv) At a GOTV rally, the candidate says: "Thank you for your continuing support."

(v) At a ticket-wide rally, the candidate says: "It is critical that we support the entire Democratic ticket in November."

(vi) A Federal officeholder says: "Our Senator has done a great job for us this year. The policies she has vigorously promoted in the Senate have really helped the economy of the State."

(vii) A candidate says: "Thanks to your contributions we have been able to support our President, Senator and Representative during the past election cycle."

(n) *To direct.* For the purposes of part 300, *to direct* means to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value. The contribution, donation, transfer, or thing of value may be made or provided directly or through a conduit or intermediary. Direction does not include merely providing information or guidance as to the applicability of a particular law or regulation.

* * * * *

Dated: March 13, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06–2623 Filed 3–17–06; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–1147]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted a final rule to require Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and the regulations issued thereunder.

DATES: This rule is effective April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Nina A. Nichols, Assistant Director, (202) 452–2961, Shaswat K. Das, Counsel, (202) 452–2428, or Bridget M. Neill, Assistant Director, (202) 452–5235, Division of Banking Supervision and Regulation; or Ann E. Misback, Associate General Counsel, (202) 452–3788, or Jennifer Sutton, Attorney, (202) 452–3564, Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulations on Bank Secrecy Act Compliance Programs

Subchapter II of chapter 53 of Title 31, United States Code, commonly known as the "Bank Secrecy Act," generally requires financial institutions to, among other things, keep records and make reports that have a high degree of usefulness in criminal, tax, or regulatory proceedings. Section 1359 of the Anti-Drug Abuse Act of 1986, Pub. L. 99–570, requires the supervisory agencies to prescribe regulations requiring institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and to review such procedures during the course of their examinations.[1]

[1] See 12 U.S.C. 1818(s).

The supervisory agencies' implementing regulations incorporate the minimum components of a compliance program as generally set forth in the Bank Secrecy Act at 31 U.S.C. 5318(h). These components are: (i) A system of internal controls to assure ongoing compliance; (ii) independent testing of compliance by the institution's personnel or by an outside party; (iii) the designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (iv) training for appropriate personnel.[2]

On May 30, 2003, the Board published a notice of proposed rulemaking in the **Federal Register** (68 FR 32434) to amend Regulation K (12 CFR part 211) to require Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act.

B. Overview of Comments Received

The Board received five comments regarding the proposed rule. Commenters generally supported the clarification provided by the proposed rule regarding the Bank Secrecy Act compliance obligations of Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks. Specific issues raised by the commenters are discussed below.

II. Analysis of Comments

A. Requirement for Program Approval

The proposed rule would require a branch, agency, or representative office of a foreign bank operating in the United States (except for a Federal branch, a Federal agency, or a state-chartered branch that is insured by the Federal Deposit Insurance Corporation) to establish a Bank Secrecy Act compliance program with the approval of the foreign bank's board of directors. Two commenters expressed concern regarding the proposed approval process. One commenter observed that it is often difficult to obtain timely approval of "local" U.S. matters by the board of directors of the foreign bank in the home country. The other commenter noted that a U.S. branch, agency, or representative office may not itself have a board of directors and suggested that in such situation approval by the entity's senior management in the United States should be sufficient. Commenters stated that regulators, in other instances, have addressed logistical difficulties of securing head office approval by allowing, for example, a local committee, advisory board, senior management, or regional headquarters located in the United States to perform the functions of a board of directors.

The Board believes the Bank Secrecy Act program requires attention at the highest levels of management. Boards of directors of state member banks are not permitted to delegate approval of the Bank Secrecy Act compliance program.[3] U.S. branches, agencies, and representative offices of foreign banks generally will not have separate boards of directors. Nevertheless, these offices need to be able to establish and implement amendments to their Bank Secrecy Act programs as necessary. Accordingly, the final rule provides that a foreign bank's board of directors may appoint a delegee to approve the required Bank Secrecy Act program so long as the delegee is acting under the express authority of the board of directors to approve the Bank Secrecy Act program.

B. Risk-Based Program

One commenter requested that the Board clarify in the preamble to the final rule whether Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks are expected to develop risk-based programs under the rule. The Board has consistently interpreted Regulation H to require each bank to develop a Bank Secrecy Act compliance program that is tailored to address the risks presented by its business operations and customer base, provided that the minimum requirements set forth in section 208.63 of Regulation H are met. Under longstanding existing supervisory practice, as reflected in the final rule amending Regulation K, the Board expects Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks to develop and implement Bank Secrecy Act compliance programs that are risk-based.

C. Text of Regulation H Requirements

The proposed rule incorporated by reference the minimum requirements for Bank Secrecy Act compliance programs that are set forth in Regulation H at section 208.63 (12 CFR 208.63). One commenter suggested that the rule would be easier to use and more understandable if the final rule set forth the full text of the regulatory requirements found in Regulation H.

Many cross-references are made in Board regulations to provisions contained elsewhere. For example, the suspicious activity reporting rule for state member banks is found at 12 CFR 208.62 and is cross-referenced in Regulations K and Y at 12 CFR 211.5(k), 211.24(f), and 225.4(f). Similarly, the Customer Identification Program rule is found at 31 CFR 103.121 and is cross-referenced in Regulations H and K at 12 CFR 208.63(b)(2), 12 CFR 211.5(m)(2), and 211.24(j)(2). The Board believes this format is sufficiently clear; as a result, the final rule continues to incorporate by reference the text of the minimum requirements for Bank Secrecy Act compliance programs found in section 208.63 of Regulation H.

D. Applicability to Offshore Interests of U.S. Banking Organizations

The proposed rule by its terms would require Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks (except for a Federal branch, a Federal agency, or a state-chartered branch that is insured by the Federal Deposit Insurance Corporation) to establish Bank Secrecy Act compliance programs. One commenter requested that the final rule clarify that it does not apply to the investments of U.S. banks or Edge and Agreement corporations in offshore entities, whether those investments are subsidiaries, joint ventures, or portfolio investments. The definitions of "financial institution" and "bank" in the Bank Secrecy Act and regulations thereunder do not encompass foreign offices or foreign investments of U.S. banks or Edge and Agreement corporations.[4] Nevertheless, banks are expected to have policies, procedures, and processes in place at all their branches and offices to protect against risks of money laundering and terrorist financing. Moreover, an enterprise-wide anti-money laundering compliance program that assesses risk on a consolidated basis across all activities, business lines, and legal entities may be an essential tool in managing such risks.

III. Regulatory Analysis

A. Regulatory Flexibility Act

In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The final rule creates a

[2] The Board's implementing regulation is found in Regulation H at section 208.63 (12 CFR 208.63).

[3] See 12 CFR 208.63(b). ("The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.")

[4] See 31 U.S.C. 5312(a)(2); 31 CFR 103.11(c).

uniform regulatory standard for ensuring and examining compliance with applicable law and regulation. Institutions covered by the rule, whether small or large, are already required to have policies and procedures substantially equivalent to those required by the rule. Accordingly, the Board certifies that this final rule will not have a significant economic impact on a substantial number of small business entities.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collections of information associated with this rulemaking are found in 12 CFR 211.5 and 211.24. This information is required to evidence compliance with the requirements of the Bank Secrecy Act, and the regulations promulgated thereunder. The recordkeepers are for-profit financial institutions.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this collection of information unless it displays a currently valid OMB control number. The OMB control number is 7100–0310.

The final rule does not change the collection of information requirements set forth in the proposed rule. The final rule applies only to Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board. The final rule requires each of those entities to establish a written compliance program that includes the following components: (i) A system of internal controls to assure ongoing compliance; (ii) independent testing of compliance by the institution's personnel or by an outside party; (iii) the designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (iv) training for appropriate personnel. The compliance program must be approved by the board of directors (and noted in the minutes) or by a delegee of the foreign bank's board of directors.

The commenters generally agreed that there would be little burden associated with the requirements for establishing a compliance program for the Bank Secrecy Act because the measures involved in the program are consistent with existing requirements under the Bank Secrecy Act at 31 U.S.C. 5318(h) and usual and customary business practices. The Board continues to believe that the estimated average annual burden of 16 hours per institution is accurate, because branches, agencies, and representative offices of foreign banks and Edge and Agreement corporations are currently subject to the program requirements of section 5318(h) of the Bank Secrecy Act. Thus, the rule adopted today clarifies the existing obligations of these entities under the Board's rules. Because the records would be maintained at branches, agencies, and representative offices of foreign banks and Edge and Agreement corporations, and the records are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Estimated number of financial institutions subject to the final rule: 520.

Estimated average annual burden for establishing the written compliance program per financial institution: 16 hours (2 business days).

Estimated total annual burden: 8,320 hours.

The Federal Reserve has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding any aspect of this collection of information, including suggestions for reducing the burden may be sent to: Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 7100–0310), Washington, DC 20503.

IV. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board requested comment on whether there were ways to make the proposed rule easier to understand. One commenter suggested that the rule would be easier to use if it set forth the full text of the regulatory requirements found in section 208.63. For the reasons discussed above, the Board has determined to continue to incorporate by reference the text of the minimum requirements for Bank Secrecy Act compliance programs found in section 208.63 of Regulation H. The Board believes that the final rule is written plainly and presented clearly.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, part 211 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

■ 2. In § 211.5 add new paragraph (m)(1) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(m) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) *Establishment of Compliance Program.* Each Edge corporation and each agreement corporation shall, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

* * * * *

■ 3. In § 211.24 add new paragraph (j)(1) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(j) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) *Establishment of Compliance Program.* Except for a Federal branch or a Federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States shall, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the

Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, and either:

(i) Approved by the foreign bank's board of directors and noted in the minutes, or

(ii) Approved by a delegee acting under the express authority of the board of directors to approve the Bank Secrecy Act compliance program.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 15, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–2629 Filed 3–17–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AA62

Mental Health Parity

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final amendment to regulation.

SUMMARY: This document contains an interim final amendment to modify the sunset date of interim final regulations under the Mental Health Parity Act (MHPA) to be consistent with legislation passed during the 109th Congress.

DATES: *Effective date.* The interim final amendment is effective December 31, 2005. *Applicability dates.* The requirements of the interim final amendment apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan beginning December 31, 2005. The MHPA interim final amendment extends the sunset date from December 31, 2005 to December 31, 2006. Pursuant to the extended sunset date, MHPA requirements apply to benefits for services furnished before December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Suzanne Bach, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335.

Customer Service Information: Individuals interested in obtaining additional information on the Mental Health Parity Act and other health care laws may request copies of Department of Labor publications concerning changes in health care law by calling the EBSA Toll-Free Hotline at 1–866–444-EBSA (3272), or access the publications on-line at *http://www.dol.gov/ebsa,* the Department of Labor's Web site. Information on the Mental Health Parity Act and other health care laws is also available on the Department of Labor's interactive Web pages, Health Elaws (*http://www.dol.gov/elaws/ebsa/health*).

SUPPLEMENTARY INFORMATION:

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 1080).

The provisions of MHPA, as originally enacted, are set forth in Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act.[1] The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under state law.

B. Overview of MHPA

The MHPA provisions set forth in section 712 of ERISA apply to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions applied to benefits for services furnished before September 30, 2001. On December 22, 1997, the Departments of Labor, the Treasury, and Health and Human Services issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107–116, 115 Stat. 2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education. This legislation extended MHPA's original sunset date under ERISA, the Code, and the PHS Act, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002.

On March 9, 2002, President Bush signed H.R. 3090, the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21), that included an amendment to section 9812 of the Code (the mental health parity provisions). This legislation further extended MHPA's original sunset date under the Code to December 31, 2003.

On September 27, 2002, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (67 FR 60859). The interim final amendment included the new statutory sunset date under H.R. 3061, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002. The Department made the effective date of this interim final amendment to the regulations September 30, 2001.

On December 2, 2002, President Bush signed H.R. 5716, the Mental Health Parity Reauthorization Act of 2002 (Pub. L. 107–313, 116 Stat. 2457), an amendment to section 712 of ERISA and Section 2705 of the PHS Act. This legislation further extended MHPA's original sunset date under ERISA and the PHS Act to December 31, 2003. On April 14, 2003, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (68 FR 18048). The interim final amendment included the new statutory sunset date under H.R. 5716, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2003.

On December 19, 2003, President Bush signed S. 1929, the Mental Health Parity Reauthorization Act of 2003 (Pub. L. 108–197, 117 Stat. 2998), an amendment to section 712 of ERISA and Section 2705 of the PHS Act. This legislation further extended MHPA's original sunset date under ERISA and the PHS Act to December 31, 2004. On January 26, 2004, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (69 FR 3815). The final rule included the new statutory sunset date under S. 1929, so that MHPA's provisions would apply to

[1] Part 7 of Subtitle B of Title 1 of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191.

benefits for services furnished before December 31, 2004.

On October 4, 2004, President Bush signed H.R. 1308, the Working Families Tax Relief Act of 2004 (Pub. L. 108–311, 118 Stat. 1166), an amendment to section 712 of ERISA, Section 9812 of the Code, and Section 2705 of the PHS Act which extended MHPA's original sunset date under ERISA, the Code, and the PHS Act to December 31, 2005. On December 17, 2004, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (69 FR 75798). The final rule included a new sunset date under H.R. 1308 so that MHPA's provisions would apply to benefits for services furnished before December 31, 2005.

On December 30, 2005, President Bush signed H.R. 4579, the Employee Retirement Preservation Act (Pub. L. 109–151, 119 Stat. 2886) which amends ERISA, the Code, and the PHS Act to further extend MHPA's original sunset date to December 31, 2006. Like MHPA, this amendment to MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.[2] As a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has developed this amendment of the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date. The Department is also making conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date.

Since the extension of this sunset date is not discretionary, this amendment to the MHPA regulations is promulgated on an interim final basis pursuant to Section 734 of ERISA. This interim final amendment is also promulgated pursuant to Section 553(d)(3) of the Administrative Procedure Act, allowing for regulations to become effective immediately for good cause.

[2] The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term "small employer" is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

C. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order. This action is an amendment to the interim final regulations and merely extends the regulatory sunset date to conform to the new statutory sunset date added by H.R. 4579.

D. Paperwork Reduction Act

The information collection provisions of MHPA incorporated in the Department's interim final rules are currently approved under OMB control numbers 1210–0105 (Notice to Participants and Beneficiaries and Federal Government of Electing One Percent Increased Cost Exemption) and 1210–0106 (Calculation and Disclosure of Documentation of Eligibility for Exemption). Because this action does not change the approved information collection provisions, no submission for OMB approval is being made in connection with this interim final amendment. OMB's approvals of the two information collection requests referred to above are currently scheduled to expire on January 31, 2008, and December 31, 2007, respectively.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Because this amendment to the interim final regulations is being published on an interim final basis, without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), as well as Executive Order 12875, this interim final amendment does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, and does not include mandates that may impose an annual expenditure of $100 million or more on the private sector.

G. Congressional Review Act

This interim final amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and has been transmitted to Congress and the Comptroller General for review. This amendment to the interim final regulations is not a major rule, as that term is defined by 5 U.S.C. 804.

H. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the states, the relationship between the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This interim final amendment does not have federalism implications as it only conforms the regulatory sunset date to the new statutory sunset date added by H.R. 4579.

List of Subjects in 29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

Employee Benefits Security Administration

■ 29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, sec. 101(g), Pub. L. 104–191, 101 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

§ 2590.712 [Amended]

■ 2. Amend § 2590.712 (f)(1), (g)(2), and (i) by removing the date "December 31, 2005" and add in its place the date "December 31, 2006" wherever it appears in these paragraphs.

Signed at Washington, DC this 15th day of March, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 06–2655 Filed 3–17–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 13)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2006 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board adopts its 2006 User Fee Update and revises its fee schedule to recover the costs associated with the January 2006 Government salary increases and to reflect changes in overhead costs to the Board.

DATES: *Effective Date:* These rules are effective April 19, 2006.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1727. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3 require that the Board's user fee schedule be updated annually. The regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d).

Because Board employees received a salary increase of 3.44% in January 2006, the Board is updating its user fees to recover the increased personnel costs. With certain exceptions, all fees, including those adopted or amended in *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services—2002 New Fees,* STB Ex Parte No. 542 (Sub-No. 4) (STB served Mar. 29, 2004) will be updated based on the cost formula contained in 49 CFR 1002.3(d). In addition, changes to the overhead costs borne by the Board are reflected in the revised fee schedule.

The fee increases adopted here result from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update,* 4 I.C.C.2d 137 (1987). No new fees are being proposed in this proceeding. Therefore, the Board finds that notice and comment are unnecessary for this proceeding. *See Regulations Governing Fees For Services—1990 Update,* 7 I.C.C.2d 3 (1990); *Regulations Governing Fees For Services—1991 Update,* 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services—1993 Update,* 9 I.C.C.2d 855 (1993).

The Board concludes that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at *http://www.stb.dot.gov* or call the Board's Information Officer at (202) 565–1500. To purchase a copy of the decision, write to, call, e-mail, or pick up in person from ASAP Document Solutions, 9332 Annapolis Road, Suite 103 Lanham, MD 20706, (202) 306–4004, *asapdc@verizon.net.* [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877–8339.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: March 13, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. Section 1002.1 is amended by revising paragraphs (a), (b), (d) and (f)(1); and the table in paragraph (g)(6) and paragraph (g)(7) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $14.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $35.00 per hour.

* * * * *

(d) Photocopies of tariffs, reports, and other public documents, at the rate of $1.20 per letter or legal size exposure. A minimum charge of $6.00 will be made for this service.

* * * * *

(f) * * *

(1) A fee of $62.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(g) * * *

(6) * * *

Grade	Rate
GS–1	$10.43
GS–2	11.36
GS–3	12.80
GS–4	14.37
GS–5	16.08
GS–6	17.92
GS–7	19.91
GS–8	22.05
GS–9	24.36
GS–10	26.82
GS–11	29.47
GS–12	35.32
GS–13	42.00
GS–14	49.64
GS–15 and over	58.39

(7) The fee for photocopies shall be $1.20 per letter or legal size exposure with a minimum charge of $6.00.

* * * * *

■ 3. In § 1002.2, paragraph (f) is revised as follows:

§ 1002.2 Filing fees.

(a) * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$3,700
(2)(i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	1,700
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered.	2,700
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	2,200
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	23,300
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	3,900
(ii) Minor amendment	80
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	400
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	1,400
(7)–(10) [Reserved]	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11)(i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	6,100
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	1,500
(iii) Petition for exemption under 49 U.S.C. 10502	10,600
(12)(i) An application involving the construction of a rail line	62,900
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	1,500
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	62,900
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d).	200
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	2,600
(14)(i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	5,200
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	1,500
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	5,600
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,400
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21)(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	18,700
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	3,100
(iii) A petition for exemption under 49 U.S.C. 10502	5,300
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	400
(23) Abandonments filed by bankrupt railroads	1,600
(24) A request for waiver of filing requirements for abandonment application proceedings	1,500
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	1,300
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	19,100
(27)(i) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d)	200
(ii) A request to extend the period to negotiate a trail use agreement	350
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	16,000
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	8,600
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	1,257,600
(ii) Significant transaction	251,500
(iii) Minor transaction	6,500
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,400
(v) Responsive application	6,500
(vi) Petition for exemption under 49 U.S.C. 10502	7,900
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	4,600
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	1,257,600
(ii) Significant transaction	251,500
(iii) Minor transaction	6,500
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	1,100
(v) Responsive application	6,500
(vi) Petition for exemption under 49 U.S.C. 10502	7,900
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	4,600

Type of proceeding	Fee
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	1,257,600
(ii) Significant transaction	251,500
(iii) Minor transaction	6,500
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,000
(v) Responsive application	6,500
(vi) Petition for exemption under 49 U.S.C. 10502	7,900
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	4,600
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	1,257,600
(ii) Significant transaction	251,500
(iii) Minor transaction	6,500
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,200
(v) Responsive application	6,500
(vi) Petition for exemption under 49 U.S.C. 10502	5,600
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	4,600
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	2,000
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	58,800
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	10,900
(ii) Minor amendment	80
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	650
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	6,700
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	200
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	200
(49)–(55) [Reserved]	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	140,600
(ii) A formal complaint involving rail maximum rates filed under the small rate case procedures	150
(iii) All other formal complaints (except competitive access complaints)	13,900
(iv) Competitive access complaints	150
(v) A request for an order compelling a rail carrier to establish a common carrier rate	200
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	7,400
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	1,000
(ii) All other petitions for declaratory order	1,400
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	5,900
(60) Labor arbitration proceedings	200
(61)(i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).	200
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	300
(62) Motor carrier undercharge proceedings	200
(63)(i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.	200
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacies.	200
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).	500
(65)–(75) [Reserved]	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	1,000
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	100
(78) The filing of tariffs, including supplements, or contract summaries	$1 per page ($20 minimum charge).
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	50
(ii) Applications involving over $25,000	100
(80) Informal complaint about rail rate applications	500
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	50
(ii) Petitions involving over $25,000	100
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	200

Type of proceeding	Fee
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	$34 per document.
(84) Informal opinions about rate applications (all modes)	200
(85) A railroad accounting interpretation	950
(86)(i) A request for an informal opinion not otherwise covered	1,200
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).	4,300
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.	400
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(iii) Third Party Complaint	75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	150
(88) Basic fee for STB adjudicatory services not otherwise covered	200
(89)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	$27 per delivery.
(97) Request for service or pleading list for proceedings	$20 per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that:	
(i) Does not require a **Federal Register** notice:	
(a) Set cost portion	100
(b) Sliding cost portion	$39 per party.
(ii) Does require a **Federal Register** notice:	
(a) Set cost portion	350
(b) Sliding cost portion	$39 per party.
(99)(i) Application fee for the Surface Transportation Board's Practitioners' Exam	150
(ii) Practitioners' Exam Information Package	25
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file—per year	$25 per year.
(iii) Public requests for *Source Codes* to the PC version URCS Phase III	100
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—per year	$250 per year.
(ii) Waybill—Surface Transportation Board or State proceedings on R–CD—per year	$500 per year.
(iii) User Guide for latest available Carload Waybill Sample	50
(iv) Specialized programming for Waybill requests to the Board	$93 per hour.

* * * * *

[FR Doc. 06–2662 Filed 3–17–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050426117–5117–01; I.D. 031406F]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action - #1 - Adjustment of the Commercial and Recreational Fisheries from Cape Falcon, Oregon, to Point Sur, California

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

ACTION: Temporary rule; closure; request for comments.

SUMMARY: NMFS announces the closure of several commercial and recreational fisheries in areas extending from Cape Falcon, OR, to Point Sur, CA by inseason action. The recently developed preseason forecast for Klamath River fall Chinook (KRFC) is low such that the expected return in 2006 is significantly less than the 35,000 natural spawner escapement floor established in the Pacific Coast Salmon Fishery Management Plan (FMP). All other regulations remain in effect as announced in the 2005 annual management measures for ocean salmon fisheries. This action is necessary to conform to the conservation objectives specified in the FMP.

DATES: Openings scheduled for commercial salmon fisheries in the Newport, Coos Bay, OR, Klamath Management Zone (KMZ), and Fort Bragg, CA, management areas identified below are closed effective 0001 hours local time (l.t.) March 15, 2006, until 2359 hours l.t., on April 30, 2006. The recreational salmon fisheries scheduled to open in the San Francisco, CA, management area, and in the area from Pigeon Point to Point Sur, CA, effective 0001 hours l.t., April 1, 2006, until 2359 hours l.t., April 30, 2006 are closed. The recreational fishery opening in the area from Point Sur, CA, to the U.S.-Mexico Border will open as scheduled on April 1, 2006. Comments must be received no later than April 4, 2006.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn,. Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2006salmonIA1.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments,

and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Peter Dygert, 206–526–6734.

SUPPLEMENTARY INFORMATION: In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced management measures for the commercial salmon fishery in the areas from Cape Falcon to Florence South Jetty, OR (Newport), Florence South Jetty to Humbug Mountain, OR (Coos Bay), Humbug Mountain to the Oregon-California Border (Oregon KMZ), and Horse Mountain, CA to Point Arena, CA (Fort Bragg). For each of these areas the management measures specified that: "In 2006, the season will open March 15 for all salmon expect coho, with a 27–inch (68.6–cm) Chinook minimum size limit." Management measures for recreational fisheries in the areas from Point Arena to Pigeon Point, CA (San Francisco) and from Pigeon Point to the U.S.-Mexico Border specified that: "In 2006, the season will open April 1 for all salmon except coho, two fish per day (C.1), Chinook minimum size limit 20 inches (50.8 cm) total length (B), and the same gear restrictions as in 2005 (C.2, C.3)." Exact boundaries of these areas are described in the 2005 management measures cited below.

Information related to the status of KRFC became available in February 2006 and was considered at the March Council meeting. The conservation objective for KRFC requires a return of 33–34 percent of potential adult spawners, but no fewer that 35,000 naturally spawning adults, be achieved in any one year. The preseason forecast for KRFC indicates that, if the ocean fishery is closed between Cape Falcon, OR and Point Sur, CA through August 2006, and the tribal and recreational fisheries in the Klamath River are closed for the remainder of the year, the expected number of natural area adult spawners would be approximately 29,000. Under the Salmon FMP a "conservation alert" is triggered when a stock is projected to fall below its conservation objective. Under such circumstances the Council is required to close salmon fisheries within Council jurisdiction that impact the stock.

The escapement of KRFC also fell below the 35,000–escapement floor in 2004 and 2005. The FMP provides that an "overfishing concern" is triggered if postseason estimates indicate that a natural stock has failed to achieve its conservation objective in three consecutive years. If KRFC fail to meet the 35,000 fish escapement floor in 2006, as indicated by postseason estimates that will become available early next year, an overfishing concern would be triggered, and the Council would be required to complete a formal review within one year and develop an associated rebuilding plan.

Late season ocean fisheries that occur from September to November are expected to catch immature KRFC, some of which would spawn in the following year. Late season fisheries occurred in 2005 consistent with the 2005 management measures, but caught more KRFC than anticipated. The estimated late season catch of KRFC in 2005 was approximately 6,100. Council fisheries are managed to achieve 50:50 tribal:non-tribal sharing of adult harvest. Despite the fact that the forecast now available indicates that the run size is such that the escapement floor will not be met in 2006, some non-tribal ocean catch has already occurred, as explained above, and there will likely be additional harvest by the tribes targeting their allocation. Any additional harvest in ocean fisheries would further reduce the run size and provide further expectations for tribal catch.

The Regional Administrator consulted with the Council, including representation of the Oregon Department of Fish and Wildlife and California Department of Fish and Game, during the March 2006 Council meeting. Information related to the status of KRFC and catch to date indicated that restricting the fisheries scheduled to occur before May 1 was necessary to avoid further reductions in the escapement of KRFC that were already projected to return below the 35,000–fish spawning escapement floor. Based on the available information, the Council recommended that the commercial and recreational salmon fisheries described above be closed by inseason action, and the Regional Administrator concurred with the Council's recommendation. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone consistent with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the previously described action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the FMP, and regulations implementing the FMP 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time information regarding the projected escapement of KRFC and the estimates of the impacts of the scheduled March and April fisheries on the KRFC were available to the fishery managers and March 15, when the fishery closures had to be effective in order to prevent the additional KRFC harvest. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would result in further reductions to the spawning escapement of KRFC that are already expected to return below the 35,000 fish spawning escapement floor.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: March 15, 2006.

James P. Burgess,

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

[FR Doc. 06–2654 Filed 3–15–06; 2:06 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 53
Monday, March 20, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Comment Request and Notice of Public Meeting for Programmatic Environmental Assessment (PEA) for Malaria Vector Control Interventions

AGENCY: Agency for International Development.

ACTION: Comment request and notice of public meeting.

SUMMARY: In compliance with 22 CFR part 216, USAID is conducting a "Programmatic Environmental Assessment (PEA) for Malaria Vector Control Interventions." This Assessment is intended to serve as a general evaluation of human health and environmental issues related to the use of certain mosquito control methods that contribute to malaria prevention and control. USAID provides financial and technical support for the use of such methods as part of national malaria control programs in USAID-assisted countries and, therefore, must conduct this Program Environmental Assessment to evaluate the potential health and environmental consequences of these agency actions. The Program Environmental Assessment will also provide guidance to USAID Missions on preparing country- and activity-specific Supplemental Environmental Assessments, which will be conducted on major individual actions that may have significant environmental impacts where such impacts have not been adequately evaluated in the Program Environmental Assessment. The PEA is intended to facilitate USAID's use of these interventions while meeting safety and efficacy guidelines.

The Program Environmental Assessment will address Indoor Residual Spraying (IRS), Environmental Management and Larviciding. The content of the Assessment will include the following: Background on Malaria and Malaria Vector Control; Proposed Actions and Alternatives; Affected Environment; Human Health and Environmental Consequences; Mitigation, Monitoring and Evaluation; Regulatory, Legal and Institutional Settings; Training and Institutional Capacity Building; and Cross-Cutting Issues.

USAID requests that members of the public review the Assessment and provide comments via the electronic format described below. USAID will also hold a public meeting to receive comments on the content of the Assessment.

DATES: The Assessment will be available for public review on or about March 22, 2006. USAID will consider all comments received on or before April 14, 2006. A public meeting on the document will be held on March 29, 2006 at 1 p.m.

ADDRESSES: The Assessment may be viewed on the Web at *http://www.fightingmalaria.gov*. All comments must be submitted either via e-mail (*IVMPEA@usaid.gov*) or in person at the public meeting. The public meeting location is the USAID Public Information Center, Suite M1, Mezzanine Level, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington DC. **Note:** Photo identification is required for entry into the Ronald Reagan Building).

FOR FURTHER INFORMATION CONTACT: Matthew Lynch, Malaria Advisor, USAID Washington RRB 3.07–024 3700; telephone number: 202–712–6044; e-mail address: *mlynch@usaid.gov*.

SUPPLEMENTARY INFORMATION: Although USAID supports the use of Insecticide Treated Nets (ITNs) for malaria control, the Assessment does not address distribution of ITNs. This intervention is considered in a separate, previously completed assessment, entitled "Programmatic Environmental Assessment for Insecticide-Treated Materials in USAID Activities in Sub-Saharan Africa", available at *http://www.encapafrica.org/docs/pest-pesticide%20mgmt/ITM%20PEA.DOC*.

Dated: March 14, 2006.

Irene Koek,

Infectious Diseases Division Chief.

[FR Doc. E6–3972 Filed 3–17–06; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 14, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Development

Title: Rural Empowerment Zones and Enterprise Communities.

OMB Control Number: 0570–0027.

Summary of Collection: The Community Renewal Tax Relief Act of 2000 extends the duration for all

Empowerment Zone through December 2009. The Rural Empowerment Zones and Enterprise Communities program (EZ/EC) provides economically depressed rural areas and communities with opportunities for growth and revitalization. USDA has designated 80 Champion communities from the EZ/EC applicant communities that have agreed to implement their strategic plans in accordance with the principles of the program and report regularly on their progress.

Need and Use of the Information: Periodic reviews provide the basis for USDA to continue or revoke a designation during the life of the Federal program. These reports provide progress on each project that the designee has specified in their implementation plans. A warning letter maybe sent to recipients who have been regarded as noncompliance or have made insufficient progress in implementing the strategic plan.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,402.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–3961 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 14, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

OMB Control Number: 0524–0036.

Summary of Collection: Section 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) requires that a plan of work must be submitted by each institution and approved by the Cooperative State Research, Education, and Extension Service (CSREES) before formula funds may be provided to the 1862 and 1890 land-grant institutions. The plan of work must address critical agricultural issues in the State and describe the programs and project targeted to address these issues using the CSREES formula funds. The plan of work also must describe the institution's multistate activities as well as their integrated research and extension activities.

Need and Use of the Information: Institutions are required to annually report to CSREES the following: (1) The actions taken to seek stakeholder input to encourage their participation; (2) a brief statement of the process used by the recipient institution to identify individuals or groups who are stakeholders and to collect input from them; and (3) a statement of how collected input was considered. CSREES uses the information to provide feedback to the institutions on their Plans of Work and Annual Reports of Accomplishments and Results in order for institutions to improve the conduct and the delivery of their programs. Failure to comply with the requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 135,600.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–3962 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 16, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Agriculture Innovation Centers.

OMB Control Number: 0570–0045.

Summary of Collection: The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, signed May 13, 2000) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award grant funds for agriculture innovation centers, a demonstration program under which agricultural producers are to be provided with technical and business development assistance enabling them to establish businesses producing and marketing value-added products. This program is administered by Cooperative Programs within USDA's Rural Development. Grants were awarded, on a competitive basis, only in fiscal year 2003. The authorization for this program expired on September 30, 2004; however, centers are required to provide progress reports for the duration of the grant agreement to monitor compliance and measure the success of the program.

Need and Use of the Information: Performance report information is collected semi-annually from the ten agriculture innovation centers funded during the 2003 grant cycle. USDA uses performance reports to confirm that progress is being made toward achieving the stated goals of the project. A final report is submitted at the completion of the grant agreement. Centers may be non-profit corporations, for-profit corporations, institutions of higher learning, and consortia of the aforementioned entities.

Description of Respondents: Not-for-profit Institutions; Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: Semi-annually.

Total Burden Hours: 110.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–3982 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 15, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Natural Resources and Conservation Service

Title: Volunteer Program—Earth Team.

OMB Control Number: 0578–0024.

Summary of Collection: Volunteers have been a valuable human resource to the Natural Resources Conservation Service (NRCS) since 1985. NRCS is authorized by the Federal Personnel Manual (FPM) Supplement 296–33, Subchapter 22, to recruit, train and accept, with regard to Civil Service classification law, rules, or regulations, the service of individuals to serve without compensation. Volunteers may assist in any agency program/project and may perform any activities which agency employees are allowed to do. Volunteers must be 14 years of age. NRCS will collect information using several NRCS forms.

Need and Use of the Information: NRCS will collect information on the type of skills and type of work the volunteers are interested in doing. NRCS will also collect information to implement and evaluate the effectiveness of the volunteer program. Without the information, NRCS would not know which individuals are interested in volunteering.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 23,540.

Frequency of Responses: Reporting: Semi-annually.

Total Burden Hours: 1,411.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–3983 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Information Collection; Farm Storage Facility Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection in support of the Farm Storage Facility Loan Program.

DATES: Comments must be received in writing on or before May 19, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to DeAnn Allen, Price Support Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be also submitted by e-mail to *deann.allen@wdc.usda.gov.* Copies of the information collection may be requested by writing to DeAnn Allen at the above address.

FOR FURTHER INFORMATION CONTACT: DeAnn Allen, Price Support Division,

Farm Service Agency, USDA at (202) 720–9889.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Farm Storage Facility Loan Program.

OMB Control Number: 0560–0204.

Expiration Date: November 30, 2006.

Type of Request: Extension with revision of a currently approved information collection.

Abstract: This information is needed to administer the CCC's Farm Storage Facility Loan Program, which is covered under the regulation of 7 CFR part 1436. The information will be gathered from producers needing additional on farm grain storage and handling capacity to determine whether they are eligible for loans.

Estimate of Burden: Average 15 minutes per respondent.

Respondents: Eligible producers.

Estimated Number of Respondents: 2,000.

Estimated Annual Number of Respondents: 14,600.

Estimated Total Annual Burden on Respondents: 3820 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on March 9, 2006.

Michael Yost,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–3960 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. No. 106–393).

DATES: The meeting will be held April 24–28, 2006, beginning at 1 p.m. on Monday, April 24 and ending at approximately 4 p.m. on Friday, April 28.

ADDRESSES: The meeting will be held at the Holiday Inn, 5050 Jefferson St., NE., Albuquerque, NM 87109; 505–944–2222. Written comments should be sent to Walter Dunn, at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, NM 87102. Comments may also be sent via e-mail to *wdunn@fs.fed.us*, or via facsimile to Walter Dunn at (505) 842–3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, or during the Panel meeting at the Holiday Inn, 5050 Jefferson St., NE., Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842–3425, or Melissa Zaksek, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Panel discussion is limited to Forest Service staff and Panel members. However, project proponents may respond to questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant proposal review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

Dated: March 14, 2006.

Abel M. Camarena,

Deputy Regional Forester,

[FR Doc. 06–2650 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, April 13, 2006 and June 8, 2006. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held April 13, 2006 and June 8, 2006 at 6 p.m.

ADDRESSES: The meetings will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *lkolund@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 13, 2006.

Forrest Cole,

Forest Supervisor.

[FR Doc. 06–2651 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Rural Cooperative Development Grant Application Deadlines and Funding Levels

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $4.45 million in competitive grant funds for the fiscal year (FY) 2006 Rural Cooperative Development Grant (RCDG) Program. The intended effect of this notice is to solicit applications for FY 2006 and award grants on or before September 15, 2006. The maximum award per grant is $225,000 and matching funds are required.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than May 20, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

Electronic copies must be received by May 20, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

ADDRESSES: You may obtain application materials for a RCDG at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* or by contacting your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing "1".

Submit completed paper applications for a grant to Cooperative Programs, Attn: RCDG Program, 1400 Independence Avenue SW., Mail Stop 3250, Room 4016–South, Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558.

Submit electronic grant applications at *http://www.grants.gov*, following the instructions found on this Website.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm*, which contains application guidance, including frequently asked questions and an application guide or contact your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing "1", or by selecting the Contacts link at the above Website. Applicants are encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Rural Cooperative Development Grant.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.771.

Dates: Application Deadline: You may submit completed applications for grants on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than May 20, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

Electronic copies must be received by May 20, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

I. Funding Opportunity Description

RCDGs are authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(e)). Regulations are contained in 7 CFR part 4284, subparts A and F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. Grant funds are provided for the establishment and operation of Centers that have the expertise or who can contract out for the expertise to assist individuals in the startup, expansion or operational improvement of cooperative businesses. The program is administered through USDA Rural Development State Offices acting on behalf of RBS.

Definitions

The definitions published at 7 CFR 4284.3 and 4284.504 are incorporated by reference.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2006.

Approximate Total Funding: $4.45 million.

Approximate Number of Awards: 22.

Approximate Average Award: $202,500.

Floor of Award Range: None.

Ceiling of Award Range: $225,000.

Anticipated Award Date: September 15, 2006.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Grants may be made to nonprofit corporations and institutions of higher education. Grants may not be made to public bodies.

B. Cost Sharing or Matching

Matching funds are required. Applicants must verify in their applications that all matching funds are available for the time period of the grant. The matching fund requirement is 25 percent of the total project cost (5 percent in the case of 1994 Institutions). Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. However, matching funds may include loan proceeds from Federal sources. Matching funds must be spent in advance or as a pro-rata portion of grant funds being expended. Therefore, if you are providing 25 percent of the total project cost as match, you must show that 25 percent or more of the amount of grant funds being requested has been expended in matching funds. All of the matching funds must be provided by either the applicant or a third party in the form of cash or in-kind contributions. All of the matching funds must be spent on eligible expenses and must be from eligible sources. Any in-kind contributions must be performed for the benefit of the Center. The Center must be able to document and verify the number of hours worked and the value associated with the contribution. In-kind contributions provided by individuals, businesses, or cooperatives who are being assisted by the Center cannot be provided for the benefit of their own projects as USDA Rural Development considers this to be a conflict of interest or the appearance of a conflict of interest. Applications will be considered ineligible if any proposed matching funds are for ineligible purposes.

C. Other Eligibility Requirements

Grant Period Eligibility: Applications should have a timeframe of no more than 365 days with the time period beginning no earlier than October 1, 2006 and no later than January 1, 2007. Projects must be completed within the 1-year timeframe. The Agency will not approve requests to extend the grant period.

Completeness Eligibility: Applications will not be considered for funding if they do not provide sufficient information to determine eligibility, if they are non-responsive to the submission requirements detailed in Section IV of this notice or if they are

missing any required elements (in whole or in part), except for the exceptions noted in the Section V.B.

Activity Eligibility: Applications must propose the development or continuation of the cooperative development center concept or they will not be considered for funding. Additionally, applications that focus assistance to only one cooperative will not be considered for funding. Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible, and the application will not be considered for funding. If an application has ineligible costs of 10 percent or less of total project costs, it will be treated as described in Section V.B.

IV. Application and Submission Information

A. Address To Request Application Package

If you plan to apply using a paper application, you can obtain the application forms and an application template for this funding opportunity at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm*. If you do not have access to the internet, or if you have difficulty accessing the forms online, you may contact your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing "1". Application forms can be mailed to you. If you plan to apply electronically, you must visit *http://www.grants.gov* and follow the instructions. Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure they have obtained the proper authentication and have sufficient computer resources to complete the application.

B. Content and Form of Submission

You may submit your application in paper or in an electronic format. To view an application guide, visit *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm*. It is recommended that applicants use the template provided on the website. The template can be filled out electronically and printed out for submission with the required forms for paper submission or it can be filled out electronically and submitted as an attachment through *http://www.grants.gov*.

If you submit your application in paper form, you must submit one signed original of your complete application. The application must be in the following format:

- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch on the top, bottom, left, and right.
- Printed on only one side of each page.
- Held together only by rubber bands or metal or plastic clips; not bound in any other way.
- Language: English, avoid jargon.

The submission must include all pages of the application. It is recommended that the application be in black and white, not color. Those evaluating the application will only receive black and white images.

If you submit your application electronically, you must follow the instructions given at *http://www.grants.gov*. Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding except as set forth in Section V.B.

1. *Form SF–424, "Application for Federal Assistance."* In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's Data Universal Numbering System (DUNS) number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number, the start and end dates of the project, the Federal funds requested, other funds that will be used as matching funds, an answer to the question, "Is applicant delinquent on any Federal debt?," the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed.

You are required to have a DUNS number to apply for a grant from USDA Rural Development. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. There is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call 866–705–5711. For more information, see the RCDG Web site at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm* or contact your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing "1".

2. *Form SF–424A, "Budget Information—Non-Construction Programs."* In order for this form to be considered complete, the applicant must fill out sections A, B, C, and D. The applicant must include both Federal and matching funds as requested on the form.

3. *Form SF–424B, "Assurances—Non-Construction Programs."* In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date submitted.

4. *Survey on Ensuring Equal Opportunity for Applicants.* The Agency is required to make this survey available to all nonprofit applicants. Submitting this form is voluntary.

5. *Title Page.* The Title Page should include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

6. *Table of Contents.* For ease of locating information, each proposal must contain a detailed Table of Contents (TOC) immediately following the Title Page. The TOC should include page numbers for each component of the proposal. Pagination should begin immediately following the TOC. In order for this element to be considered complete, the TOC should include page numbers for the Executive Summary, the Eligibility discussion, the Proposal Narrative and its subcomponents (Project Title, Information Sheet, Goals of the Project, Performance Evaluation Criteria, Undertakings, and Proposal Evaluation Criteria), Certification of Judgment, Verification of Matching Funds, and Certification of Matching Funds.

7. *Executive Summary.* A summary of the proposal, not to exceed two pages, must briefly describe the Center, including project goals and tasks to be accomplished, the amount requested, how the work will be performed (*e.g.*, Center staff, consultants, or contractors) and the percentage of work that will be performed among the parties. In the event that more than two pages are submitted, only the first two pages will be considered.

8. *Eligibility.* The applicant must describe how it meets the applicant, matching, grant period and activity eligibility requirements in not to exceed two pages. In the event that more than two pages are submitted, only the first two pages will be considered.

9. *Proposal Narrative.* The proposal narrative is limited to a total of 35 pages. In the event that more than 35 pages are submitted, only the first 35 pages will be considered. The narrative portion of the proposal must include, but is not limited to, the following:

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the

essentials of the project. It should match the Project Title submitted on the SF–424. The Project Title does not need to appear on a separate page. It can be included on the Title Page and/or on the Information Sheet.

ii. Information Sheet. A separate one-page information sheet which lists each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria. If the evaluation criteria are referenced on the Table of Contents, then submitting the information sheet is not necessary.

iii. Goals of the Project. The authorizing statute set forth the goals listed below for the Centers. A Center may have additional goals for its specific projects beyond the established goals (as stated in the Executive Summary); however, the applicants must, at a minimum, include the following in this section of the narrative:

1. A statement that substantiates that the Center will effectively serve rural areas in the United States;

2. A statement that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

3. A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services; and

4. A statement that the Center, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal government, and State and local governments.

iv. Performance Evaluation Criteria. The Agency has established annual performance measures to evaluate the RCDG program. Therefore, in order to meet the requirements of this element, you must provide estimates on the following performance measures. When calculating jobs created, estimates should be based upon actual jobs to be created by the Center as a result of the RCDG funding or actual jobs to be created by businesses or cooperatives as a result of assistance from the Center. When calculating jobs saved, estimates should be based only on actual jobs that would have been lost if the Center did not receive RCDG funding or actual jobs that would have been lost without assistance from the Center. If the application is selected for funding, you will be required to report actual numbers for these performance elements on a semi-annual basis and in your final performance report. Additional information on post-award requirements can be found in Section VI.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

v. Undertakings. The applicant must expressly undertake to do the following in this section of the narrative:

1. Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sectors;

2. Make arrangements for the Center's activities to be monitored and evaluated; and

3. Provide an accounting for the money received by the grantee in accordance with 7 CFR part 4284, subpart F.

vi. Proposal Evaluation Criteria. Each of the evaluation criteria referenced in this funding announcement must be specifically and individually addressed in narrative form. See Section V.A. for a description of the Proposal Evaluation Criteria.

10. *Certification of Judgment Owed to the United States.* Applicants must certify that the United States has not obtained a judgment against them. No grant funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. "[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it." A separate signature is not required.

11. *Verification of Matching Funds.* Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify all matching funds, both cash and in-kind. Verification of matching funds letters should be included in Appendix A and will not count towards the 35-page limitation. All proposed matching funds must be specifically documented in the application. If matching funds are to be provided by the applicant in cash, there must be a statement that cash will be available, the amount of the cash, and the source of the cash. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification for funds donated outside the proposed time period of the grant will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Verification for in-kind contributions donated outside the proposed time period of the grant will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for in-kind funds does not need to be included in the application. However, the applicant must be able to demonstrate how the valuation was derived at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this grant program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this grant program as well as be used for eligible purposes. The matching funds must be spent or donated during the grant period and the funds must be expended in advance or as a pro-rata portion of grant funds being expended. Therefore, if you are providing 25 percent of the total project cost as match, you must show that 25 percent or more of the amount of grant funds being requested has been expended in matching funds. Examples of unacceptable matching funds are in-kind contributions from individuals, businesses, or cooperatives being assisted by the Center to benefit their own project, donations of fixed equipment and buildings, and the preparation of your RCDG application package.

If acceptable verification for all proposed matching funds is missing from the application, the application will be determined to be incomplete and will not be considered for funding.

12. *Certification of Matching Funds.* Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent

and that matching funds will be spent in advance of grant funding, such that for every dollar of the total project cost, not less than the required amount of matching funds will have been expended prior to submitting the request for reimbursement. Please note that this certification is a separate requirement from the Verification of Matching Funds requirement. Applicants should include a statement for this section that reads as follows: "[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will have been expended prior to submitting the request for reimbursement." A separate signature is not required.

C. Submission Dates and Times

Application Deadline Date: May 20, 2006.

Explanation of Deadlines: Paper applications must be postmarked by the deadline date (see Section IV.F for the address). Electronic applications must be received by *http://www.grants.gov* by the deadline date. If your application does not meet the deadline above, it will not be considered for funding. You will be notified that your application did not meet the submission requirements. You will also be notified by mail or by e-mail if your application is received on time.

D. Intergovernmental Review of Applications

Executive Order 12372, Intergovernmental review of Federal programs, applies to this program. This EO.requires that Federal agencies provide opportunities for consultation on proposed assistance with state and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of states that maintain an SPOC, please see the White House Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* If your state has an SPOC, you may submit a copy of your application directly for review. Any comments obtained through the SPOC must be provided to USDA Rural Development for consideration as part of your application. If your state has not established an SPOC, or you do not want to submit a copy of your application, USDA Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact your USDA Rural Development State Office for assistance and questions on this process. You can find the USDA Rural Development State Office in the telephone directory under Federal government listings, by calling (202) 720–4323 and selecting option "1" or through the USDA Rural Development Web site: *http://www.rurdev.usda/.*

E. Funding Restrictions

Funding restrictions apply to both grant funds and matching funds. Grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the total project cost. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. However, matching funds contributed by the applicant may include proceeds from a Federal loan.

1. Grant funds and matching funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

i. Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

ii. Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

iii. Training and instruction for the purpose of cooperative development.

iv. Loans and grants for the purpose of cooperative development in accordance with this notice and applicable regulations.

v. Technical assistance, research services and advisory services for the purpose of cooperative development.

2. No funds made available under this solicitation shall be used for any of the following activities:

i. To duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond that which is currently being provided;

ii. To pay costs of preparing the application package for funding under this program;

iii. To pay costs of the project incurred prior to the date of grant approval;

iv. To fund political activities;

v. To pay for assistance to any private business enterprise that does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

vi. To pay any judgment or debt owed to the United States;

vii. To plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

viii. To purchase, rent, or install fixed equipment, including laboratory equipment or processing machinery;

ix. To pay for the repair of privately owned vehicles;

x. To fund research and development;

xi. To pay costs of the project where a conflict of interest exists; or

xii. To fund any activities prohibited by 7 CFR part 3015 or 3019.

F. Other Submission Requirements

You may submit your paper application for a grant to Cooperative Programs, Attn: RCDG Program, 1400 Independence Avenue, SW., Mail Stop 3250, Room 4016–South, Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558. You may also choose to submit your application electronically using the following internet address: *http://www.grants.gov.* Applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Each application submission must contain all required documents in one envelope, if by mail or express delivery service.

V. Application Review Information

A. *Proposal Evaluation Criteria:* All eligible and complete applications will be evaluated based on the following criteria. Failure to address any one of the following criteria will render the application incomplete, and the application will not be considered for funding, except as set forth in Section V.B. The total points available are 70.

1. *Administrative capabilities.* (1–7 points) The application will be evaluated to determine whether the subject Center has a track record of administering a Nationally-coordinated, regional or State-wide operated project. Centers that have capable financial systems and audit controls, personnel and program administration performance measures and clear rules of governance will receive more points than those not evidencing this capacity.

2. *Technical assistance and other services.* (1–7 points) The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance in rural areas. This includes conducting feasibility studies, developing marketing plans, developing business plans, conducting applied research related to cooperative development, and performing those

other activities necessary for a group of individuals to form a cooperative.

3. *Economic development.* (1–7 points) The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas.

4. *Linkages.* (1–7 points) The Agency will evaluate the applicant's demonstrated ability to create horizontal linkages among businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets. These linkages must be among cooperatives and businesses, not development organizations.

5. *Commitment.* (1–7 points) The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States.

6. *Matching Funds.* (1–5 points) All applicants must demonstrate matching funds equal to at least 25 percent (5 percent for 1994 Institutions) of total project costs. Applications exceeding these minimum commitment levels will receive more points. If the applicant provides eligible matching funds of 25 percent, 1 point will be awarded; 26 to 35 percent, 2 points will be awarded; 36 to 45 percent, 3 points will be awarded; 46 to 55 percent, 4 points will be awarded; or 56 or greater percent, 5 points will be awarded. If the applicant is a 1994 Institution and provides eligible matching funds of 5 percent, 1 point will be awarded; 6 to 9 percent, 2 points will be awarded; 10 to 14 percent, 3 points will be awarded; 15 to 19 percent, 4 points will be awarded; or 20 or greater percent, 5 points will be awarded.

7. *Delivery.* (1–5 points) The Agency will evaluate whether the Center has a track record of providing technical assistance in rural areas and accomplishing effective outcomes in cooperative development. The Center's potential for delivering effective cooperative development assistance, the expected effects of that assistance, the sustainability of cooperative organizations receiving the assistance, and the transferability of the Center's cooperative development strategy and focus to other States will also be assessed.

8. *Work Plan/Budget.* (1–5 points) The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non-Federal funding commitments. Applicants must discuss the specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations. The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

9. *Qualifications of those Performing the Tasks.* (1–5 points) The application will be evaluated to determine if the personnel expected to perform key center tasks have a track record of positive solutions for complex cooperative development or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to Cooperative development center success. The applicant must also identify whether the personnel expected to perform tasks are full/part-time Center employees or contract personnel.

10. *Local support.* (1–5 points) Applications will be reviewed for previous and expected local support for the Center, plans for coordinating with other developmental organizations in the proposed service area, and coordination with State and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other positive rural amenities. Centers that demonstrate strong support from potential beneficiaries and formal evidence of the Center's intent to coordinate with other developmental organizations will receive more points than those not evidencing such support and formal intent. The applicant may submit a maximum of 10 letters of support or intent to coordinate with the application. These letters should be included in Appendix B of the application and will not count against the 35-page limitation. Additional letters from industry groups, commodity groups, local and State government, and similar organizations should be referenced, but not included in the application package. When referencing these letters, provide the name of the organization, date of the letter, the nature of the support (cash, technical assistance, moral), and the name and title of the person signing the letter.

11. *Future support.* (1–5 points) Applicants should describe their vision for Center operations in future years, including issues such as sources and uses of alternative funding; reliance on Federal, State, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. To the extent possible, applicants should document future funding sources that will help achieve long-term sustainability of the Center. Applications that demonstrate their vision for funding center operations for future years, including diversification of funding sources and building in-house technical assistance capacity, will receive more points for this criterion.

12. *Non-Agricultural Rural Cooperative Development.* (0 or 5 points) Applicants that propose to use more than 50 percent of grant and matching funds to work with rural residents and businesses who are not engaged in production agriculture to develop cooperative businesses will receive 5 points. All other applicants will receive zero points. The types of cooperative development that meet this criterion include, but are not limited to: Broadband cooperatives, housing cooperatives, healthcare cooperatives, shared-services cooperatives, daycare cooperatives, and any other type of cooperative that is not producing or marketing agricultural products.

B. Review and Selection Process

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether all required elements are complete. A list of required elements follows:

- SF–424
- SF–424A
- SF–424B
- Title Page
- Table of Contents
- Executive Summary
- Eligibility Discussion
- Project Title
- Information Sheet
- Goals of the Project
- Performance Evaluation Criteria
- Undertakings
- Administrative Capabilities Evaluation Criterion
- Technical Assistance and Other Services Evaluation Criterion
- Economic Development Evaluation Criterion
- Linkages Evaluation Criterion

- Commitment Evaluation Criterion
- Matching Funds Evaluation Criterion
- Delivery Evaluation Criterion
- Work Plan/Budget Evaluation Criterion
- Qualifications of Those Performing the Tasks Evaluation Criterion
- Local Support Evaluation Criterion
- Future Support Evaluation Criterion
- Non-Agricultural Rural Cooperative Development Criterion
- Certification of Judgment
- Verification of Matching Funds
- Certification of Matching Funds.

Incomplete applications that have four or less incomplete required elements and appear to be otherwise eligible will receive a letter requesting the incomplete items be provided within 12 business days of the date the letter was sent. If the requested items are not received when requested or are not complete, the application will not be further evaluated or considered for funding. Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible and the application will not be considered for funding. If an application has ineligible costs of 10 percent or less of total project costs, and otherwise appears eligible, the applicant will receive a letter requesting that all ineligible costs be removed from the budget and work plan and either replaced with eligible activities or eliminated within 12 business days of the date the letter was sent. Any other incomplete or ineligible applications will not be further evaluated or considered for funding. Reviewers appointed by the Agency will evaluate applications.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about September 15, 2006.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from USDA Rural Development. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applicants will receive notification by mail.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and 4284. To view these regulations, please see the following internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to grantees selected for this program:

- Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, "Request for Obligation of Funds."
- Form RD 1942–46, "Letter of Intent to Meet Conditions."
- Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."
- Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."
- Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants)."
- Form RD 400–1, "Equal Opportunity Agreement."
- Form RD 400–4, "Assurance Agreement."
- RD Instruction 1940–Q, Exhibit A–1, "Certification for Contracts, Grants and Loans."

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/rcdg/rcdg.htm.*

Reporting Requirements: You must provide USDA Rural Development with an original or electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of your grant.

1. *Form SF–269 or SF–269A.* A "Financial Status Report" listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. *Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal.* Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special conditions on the use of award funds should be discussed. The report should also include a summary at the end of the report with the following elements to assist in documenting the annual performance goals of the RCDG program for Congress.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

Reports are due as provided in paragraph 1 of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks includes, but is not limited to: Feasibility studies, marketing plans, business plans, publication quality success stories, applied research reports, copies of surveys conducted, articles of incorporation and bylaws and an accounting of how outreach, training, and other funds were expended.

3. *Final project performance reports.* These reports shall include all of the requirements of the semi-annual performance reports and responses to the following:

a. What have been the most challenging or unexpected aspects of this program?

b. What advice would you give to other organizations planning a similar program? These should include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

c. If an innovative approach was used successfully, the Grantee should describe their program in detail so that other organizations might consider replication in their areas.

The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact your USDA Rural Development State Office at *http://www.rurdev.usda.gov/rbs/coops/rcdg/Contacts.htm.* You can also reach your State Office by calling (202) 720–4323 and pressing "1". If you are unable to contact your State Office, please contact a nearby State Office or you may contact the USDA Rural Development National Office at 1400 Independence Avenue, SW., Mail Stop

3250, Rm. 4016–South, Washington, DC 20250–3250, telephone: (202) 720–7558, e-mail: *cpgrants@wdc.usda.gov*.

Dated: March 8, 2006.

Jackie J. Gleason,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E6–4006 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA): Section 515 Multi-Family Housing Preservation Revolving Loan Fund (PRLF) Demonstration Program for Fiscal Year 2006

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service, (RHS), an Agency under USDA Rural Development, announces the availability of funds and the timeframe to submit applications for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation and revitalization of low-income multi-family housing. Housing that is assisted by this demonstration program must be financed by USDA Rural Development through its multi-family housing loan program under section 515 of the Housing Act of 1949. This demonstration program will be achieved through loans made to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for the preservation and revitalization of section 515 multi-family housing as affordable housing.

DATES: The deadline for receipt of all applications in response to this NOFA is 5 p.m., Eastern Time, June 19, 2006. The application closing deadline is firm as to date and hour. The Agency will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Henry Searcy, Jr., Senior Loan Specialist, Multi-Family Housing Processing Division, STOP 0781 (Room 1263–S), or Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division, STOP 0781 (Room 1239–S), U.S. Department of Agriculture, USDA Rural Development, 1400 Independence Ave., SW., Washington, DC 20250–0781 or by telephone at (202) 720–1753 or (202) 690–0759, or via e-mail at *Henry.Searcy@wdc.usda.gov* or *Bonnie.Edwards@wdc.usda.gov*. (Please note the phone numbers are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by USDA Rural Development. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A)) Because this NOFA will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Fair Housing Act, title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and section 504 of the Rehabilitation Act of 1973, neither the intermediary nor the Agency will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The policies and regulations contained in 7 CFR part 1901, subpart E apply to this program.

(3) The Agency Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Fair Housing Act, title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and section 504 of the Rehabilitation Act of 1973.

(4) All housing must meet the accessibility requirements found at 7 CFR 3560.60(d).

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.415.

Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Division A of Pub. L. 109–97) provides funding for, and authorizes USDA Rural Development to, establish a revolving loan fund demonstration program for the preservation and revitalization of the section 515 multi-family housing portfolio. The section 515 multi-family housing program is authorized by section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and provides USDA Rural Development the authority to make loans for low income multi-family housing and related facilities.

Program Administration

I. Funding Opportunities Description

This NOFA requests applications from eligible applicants for loans to establish and operate revolving loan funds for the preservation of low-income multi-family housing within the Agency's section 515 multi-family housing portfolio. Agency regulations for the section 515 multi-family housing program are published at 7 CFR part 3560.

Housing that is constructed or repaired must meet the Agency design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, section 515 multi-family housing must be managed in accordance with the program's management regulation, 7 CFR part 3560, subpart C. Tenant eligibility is limited to persons who qualify as a very low-, low-, or moderate-income household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U.S. Department of Housing and Urban Development section 8 assistance or Low Income Housing Tax Credit Assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR 3560.152.

II. Award Information

Public Law 109–97 (November 10, 2005) made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of the section 515 multi-family housing portfolio. The total amount of funding available for this program is $6,364,414.02. As required by this statute, loans to intermediaries under this demonstration program shall have an interest rate of no more than one percent, and the Secretary of Agriculture may defer the interest and principal payment to USDA Rural Development for up to three years during the first three years of the loan. The term of such loans shall not exceed 30 years. Payments will be made on an annual basis. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance and to entities with experience in the administration of revolving loan funds and the preservation of multi-family housing.

III. Eligibility Information

Applicant Eligibility

(1) Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are private nonprofit organizations or such non-profit organizations' affiliate loan funds and State and local housing finance agencies.

(b) The intermediary must have:

(i) The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(ii) A proven record of successfully assisting low-income multi-family housing projects. Such record will include recent experience in loan making and servicing loans that are similar in nature to those proposed for the PRLF demonstration program and a delinquency and loss rate acceptable to the Agency.

(iii) The services of a staff with loan making and servicing expertise acceptable to the Agency.

(iv) Capitalization acceptable to the Agency.

(c) No loans will be extended to an intermediary unless:

(i) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.

(ii) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(iii) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence.

(iv) The Intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.1 for the fiscal year immediately prior to the year of application and a minimum DSCR of 1 for the fiscal year two years prior and the fiscal year three years prior to application.

(v) The Intermediary's prior calendar year audit indicates an unqualified audited opinion as a result of the audit.

(d) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs."

(e) Intermediaries and their principals must not be delinquent on Federal debt or be a Federal judgment debtor.

(2) Eligibility requirements—Ultimate recipients.

(a) To be eligible to receive loans from the PRLF, ultimate recipients must:

(i) Currently have a USDA Rural Development section 515 loan for the property to be assisted by the PRLF demonstration program, or be a transferee of such a loan before receiving any benefits from the PRLF demonstration program.

(ii) Be unable to provide the necessary housing from its own resources and, except for State or local public agencies and Indian tribes, be unable to obtain the necessary credit from other sources upon terms and conditions the applicant could reasonably be expected to fulfill.

(iii) Along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient.

(iv) Be in compliance with all Agency program requirements at 7 CFR part 3560 or have an Agency approved workout plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government, by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from the PRLF. PRLF loan funds may not be used to satisfy the delinquency.

(c) The ultimate recipient or any of its principals may not be a Federal judgment debtor.

IV. Application and Submission Information

Application Requirements

The application must contain the following:

(1) A summary page, that is double-spaced and not in narrative form, that lists the following items:

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan requested.

(2) Form RD 4274–1, "Application for Loan (Intermediary Relending Program)."

(3) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this demonstration program. The plan must, at a minimum:

(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this NOFA. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of the demonstration program. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(c) Demonstrate a need for loan funds. At a minimum, the intermediary must either (1) identify a sufficient number of

proposed and known ultimate recipients to justify Agency funding of its loan request; or (2) include well-developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(d) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(e) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(f) Include the intermediary's plan for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management must at least be addressed by the intermediary's relending plan;

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and any arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years (or from inception of the operations of the intermediary if less than 3 years); and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections which takes into consideration a full annual installment on the PRLF loan.

(5) Form RD 400–4, "Assurance Agreement."

(6) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(7) Latest audit report.

(8) Form RD 1910–11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."

(9) Form AD–1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions."

(10) Exhibit A–1 of RD Instruction 1940–Q, "Certification for Contracts, Grants, and Loans."

(11) Tax Returns for three years prior to application, and a current financial statement.

(12) A separate one-page information sheet listing each of the "Application Scoring Criteria" contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required, to include a checklist of all of the selection criteria as set out in more detail under Section V. Application Review Information in this NOFA and to have their application indexed and tabbed to facilitate the review process.

Submission address. Applications should be submitted to USDA Rural Housing Service; Attention: Henry Searcy, Jr., Senior Loan Specialist, Multi-Family Housing Processing Division STOP 0781 (Room 1263–S), or Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division, STOP 0781 (Room 1239–S), U.S. Department of Agriculture, USDA Rural Development, 1400 Independence Ave., SW., Washington, DC 20250–0781 or by telephone at (202) 720–1753 or (202) 690–0759 or via e-mail at *Henry.Searcy@wdc.usda.gov* or *Bonnie.Edwards@wdc.usda.gov.* (Please note the phone numbers are not toll free numbers.)

V. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the Agency Administrator concerning eligibility determinations and for the selection of applications based on the selection criteria contained in this NOFA and the availability of funds. The Administrator will inform applicants of the selection status of their application within 30 days of the loan application closing date of the NOFA.

Selection Criteria

Selection criteria points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's work plan must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an application does not fit one of the categories listed, it receives no points for that paragraph.

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence acceptable to the Agency that the other funds are available.

(a) The intermediary will obtain non-Agency loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. The Intermediary shall pledge as collateral its PRLF Revolving Fund, including its portfolio of investments derived from the proceeds of other funds and this loan award.

Points for the amount of funds from other sources are as follows:

(i) At least 10% but less than 25% of the total project cost—5 points;

(ii) At least 25% but less than 50% of the total project cost—10 points; or

(iii) 50% or more of the total project cost—15 points.

(b) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average:

(i) At least 10% but less than 25% of the total project costs—5 points;

(ii) At least 25% but less than 50% of total project costs—10 points; or

(iii) 50% or more of total project costs—15 points.

(2) Intermediary pledged security funds. The Intermediary will pledge security funds not derived from the Agency and will be considered security funds. The pledged security funds will be placed in a separate account from the PRLF loan account and will remain in this account until the PRLF revolves as described in the loan agreement. The

Intermediary shall contribute the pledged security funds into a separate bank account or accounts according to their work plan. These pledged security funds are to be placed into an interest bearing counter-signature account until the PRLF revolves. No other funds shall be commingled with such money.

The amount of the pledged security funds contributed to the PRLF will equal the following percentage of the Agency PRLF loan:

(a) At least 5% but less than 15%—15 points;

(b) At least 15% but less than 25%—30 points; or

(c) 25% or more—50 points.

(3) Experience. The intermediary has actual experience in the administration of revolving loan funds and the preservation of multi-family housing, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of revolving loan funds and the preservation of multi-family housing in order to qualify for points under this selection criteria. If the number of years of experience differs between the two types of experience, the type with the least number of years will be used for this selection criteria.

(a) At least 1 but less than 3 years—5 points;

(b) At least 3 but less than 5 years—10 points;

(c) At least 5 but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) Administrative. The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section, including: The amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other PRLF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of an existing revolving loan fund program. The Administrator will document his reasons for the points allocated.

VI. Other Administrative Requirements

(1) The following policies and regulations apply to loans to intermediaries made in response to this NOFA:

(a) The PRLF intermediary may draw down up to 25 percent of USDA PRLF loan funds at loan closing. Thereafter, the intermediary may draw down, under this award, only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances will be requested by the intermediary in writing. The date of such draw down shall constitute the date the funds are advanced under the PRLF Loan Agreement for purposes of computing interest payments.

(b) PRLF intermediaries will be required to provide the Agency with the following reports:

(i) An annual audit;

(A) The dates of the audit report period need not coincide with other reports on the PRLF. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary.

(B) It is not intended that audits required by this program be separate from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by the Office of Management and Budget Circular A–133 should submit audits made in accordance with that circulars.

(ii) Quarterly or semiannual Performance Reports (due 30 days after the end of the period);

(A) Performance Reports will be required quarterly during the first year after loan closing. Thereafter, reports will be required semiannually. Also, the Agency may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's PRLF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the PRLF loan. If other funds are included, the PRLF portion shall be segregated from the others. If the intermediary has more than one PRLF loan from the Agency, a separate report shall be made for each PRLF loan.

(C) The reports will include, on a form to be provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time regarding the conditions of the loan.

(c) USDA Rural Development may consider, on a case by case basis, subordinating its security interest on the property to the lien of the intermediary so that USDA Rural Development has a junior lien interest when an independent appraisal documents that USDA Rural Development will continue to be fully secured.

(d) The term of the loan to the ultimate recipient may not exceed the remaining term of the USDA Rural Development loan.

(e) When loans are made to the ultimate recipients for preservation purposes, Restrictive Use Provisions must be incorporated into the loan documents, as outlined in 7 CFR 3560.662.

(f) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties apply to all loans funded under this NOFA.

(g) The policies and regulations contained in 7 CFR part 1940, subpart G regarding environmental assessments apply to all loans funded under this NOFA. Loans to intermediaries under this program will be considered a Categorical Exclusion under the National Environmental Policy Act, requiring the completion of Form RD 1940–22, "Environmental Checklist for Categorical Exclusions," by the Agency.

(h) These loans are subject to the provisions of Executive Order 12372 that require intergovernmental consultation with state and local officials. USDA Rural Development conducts intergovernmental consultations for each loan in a manner delineated in RD Instruction 1940-J which is available in any Rural Development office.

(2) The intermediary agrees to the following:

(a) To obtain the written Agency approval, before the first lending of PRLF funds to an ultimate recipient, of:

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

(ii) Intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from the Agency before making any significant changes in forms, security policy, or the work plan. The Agency may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this NOFA or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's PRLF loan is outstanding;

(c) To secure the indebtedness by pledging the PRLF, including its portfolio of investments derived from the proceeds of the loan award, and other rights and interests as the Agency may require;

(d) To return, as an extra payment on the loan any funds that have not been used in accordance with the intermediary's work plan by a date 2 years from the date of the loan agreement. The intermediary acknowledges that the Agency may cancel the approval of any funds not yet delivered to the intermediary if revolving loan funds have not been used in accordance with the intermediary's work plan within the 2 year period. The Agency, at its sole discretion, may allow the intermediary additional time to use the revolving loan funds by not more than 3 additional years. If any revolving loan funds have not been used by 5 years from the date of the loan agreement, the approval will be canceled for any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any revolving loan funds it has received and not used in accordance with the work plan. In accordance with the Agency approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(3) The intermediary will be required to enter into an Agency approved loan agreement and promissory note. The promissory note will have a term not to exceed 30 years, bear interest at no more than one percent per annum, and provide for annual payments, provided that interest and principal due to the Government during the first three years of the loan may be deferred.

(4) Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of title V of the Housing Act of 1949.

(5) When an intermediary proposes to make a loan from the PRLF to an ultimate recipient, Agency concurrence is required prior to final approval of the loan. A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(a) Certification by the intermediary that:

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations; and

(iv) Prior to closing the loan to the ultimate recipient, the intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary.

(b) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

(i) Name and address of the ultimate recipient;

(ii) Loan purposes;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Other funding included in the project; and

(vi) Nature and lien priority of the collateral.

(vii) Environmental impacts of this action. This will include an original Form RD 1940–20, "Request for Environmental Information," completed and signed by the intermediary. Attached to this form will be a statement stipulating the age of the building to be rehabilitated and a completed and signed FEMA Form 81–93, "Standard Flood Hazard Determination." If the age of the building is over 50 years old or if the building is either on or eligible for inclusion in the National Register of Historic Places, then the intermediary will immediately contact the Agency to begin section 106 consultation with the State Historic Preservation Officer. If the building is located within a 100-year flood plain, then the intermediary will immediately contact the Agency to analyze any effects as outlined in 7 CFR part 1940, subpart G, Exhibit C. The intermediary will assist the Agency in any additional requirements necessary to complete the environmental review.

(c) Such other information as the Agency may request on specific cases.

(6) Upon receipt of a request for concurrence in a loan to an ultimate recipient the Agency will:

(a) Review the material submitted by the intermediary for consistency with the Agency's preservation and revitalization principals which include the following;

(i) There is a continuing need for the property in the community as affordable housing.

(ii) When the transaction is complete, the property will be owned and controlled by eligible section 515 borrowers.

(iii) The transaction will address the physical needs of the property.

(iv) Existing tenants will not be displaced because of increased post transaction rents.

(v) Post transaction basic rents will not exceed comparable market rents.

(vi) Any equity loan amount will be supported by a market value appraisal.

(b) Issue a letter concurring in the loan when all requirements have been met or notify the intermediary in writing of the reasons for denial when the Agency determines it is unable to concur in the loan.

Funding Restrictions

Loans made to the PRLF intermediary under this demonstration program may not exceed $2,125,000 and may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas.

Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of title V of the Housing Act of 1949.

VII. Appeal Process

All adverse determination regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process will be provided at the time the applicant is notified of the decision.

Dated: March 14, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E6–3963 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders Survey (M3).

Form Number(s): M–3(SD).

Agency Approval Number: 0607–0008.

Type of Request: Extension of a currently approved collection.

Burden: 16,800 hours.

Number of Respondents: 4,200.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Manufacturers' Shipments, Inventories, and Orders (M3) survey. This survey collects monthly data from domestic manufacturers on Form M–3 (SD), which is mailed at the end of each month. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods. It is currently the only survey that provides broad-based monthly statistical data on the economic conditions in the domestic manufacturing sector. It is designed to measure current industrial activity and to provide an indication of future production commitments. The value of shipments measures the value of goods delivered during the month by domestic manufacturers. Estimates of new orders serve as an indicator of future production commitments and represent the current sales value of new orders received during the month, net of cancellations. Substantial accumulation or depletion of backlogs of unfilled orders measures excess (or deficient) demand for manufactured products. The level of inventories, especially in relation to shipments, is frequently used to monitor the business cycle.

This survey provides an essential component of the current economic indicators needed for assessing the evolving status of the economy and formulating economic policy. The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) has designated this survey as a principal Federal economic indicator. The shipments and inventory data are essential inputs to the gross domestic product (GDP), while the orders data are direct inputs to the leading economic indicator series. The GDP and the economic indicator series would be incomplete without these data. The survey also provides valuable and timely domestic manufacturing data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and academia.

The data are used for analyzing short- and long-term trends, both in the manufacturing sector and as related to other sectors of the economy. The data on value of shipments, especially when adjusted for change in inventory, measure current levels of production. New orders figures serve as an indicator of future production commitments. Changes in the level of unfilled orders, because of excess or shortfall of new orders compared with shipments, are used to measure the excess (or deficiency) in the demand for manufactured products. Changes in the level of inventories and the relation of these to shipments are used to project future movements in manufacturing activity. These statistics are valuable for analysts of business cycle conditions including members of the Council of Economic Advisers (CEA), the Bureau of Economic Analysis (BEA), the Federal Reserve Board (FRB), the Department of the Treasury, business firms, trade associations, private research and consulting agencies, and the academic community.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 & 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: March 14, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–3946 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Quarterly Survey of Transactions Between U.S. and Unaffiliated Foreign Persons in Selected Services and in Intangible Assets

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before 5 p.m. May 19, 2006.

ADDRESSES: Direct all written comments to Diane Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dhynek@doc.gov*, ((202) 482–0266).

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the survey and instructions to Christopher Emond, Chief, Special Surveys Branch, International Investment Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9826; fax: (202) 606–5318; or via the Internet at *christopher.emond@bea.gov*, ((202) 482–0266).

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–25, Quarterly Survey of Transactions Between U.S. and Unaffiliated Foreign Persons in Selected Services and in Intangible Assets, obtains quarterly data from companies that have receipts from or payments to unaffiliated foreign persons in any of the types of transactions covered by the survey. The data are needed to monitor trade in services and in intangible assets, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on services and intangible assets, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The data from the survey are primarily intended as general purpose statistics. They are needed to answer

any number of research and policy questions related to cross-border trade in services.

The form remains the same as in the past. No changes in the data collected or in exemption levels are proposed.

II. Method of Collection

Survey forms will be sent to U.S. companies each quarter; responses will be due within 45 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when the reports are due within 90 days after the close of the quarter. Potential respondents are U.S. business enterprises and not-for-profit institutions that have receipts from unaffiliated foreign persons in any of the types of transactions covered by the survey greater than $6 million for the prior calendar year or that are expected to be greater than $6 million in the current calendar year; or that have payments to unaffiliated foreign persons in any of the types of transactions covered by the survey greater than $4 million for the prior calendar year or that are expected to be greater than $4 million in the current calendar year. The data collected are cut-off sample data. In addition, estimates are developed based upon previously reported or estimated data for non-respondents, including those companies that fall below the reporting threshold for the survey.

III. Data

OMB Number: 0608–0067.
Form Number: BE–25.
Type of Review: Regular submission.
Affected Public: U.S. companies and not-for-profit institutions that transact with unaffiliated foreign persons in selected services or in intangible assets.
Estimated Number of Respondents: 550 per quarter; 2,200 annually.
Estimated Time Per Response: 16 hours.
Estimated Total Annual Burden Hours: 35,200 hours.
Estimated Total Annual Cost: $1,408,000 (based on an estimated reporting burden of 35,200 hours and an estimated hourly cost of $40).
Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2006.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E6–3947 Filed 3–17–06; 8:45 am]
BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before 5 p.m. May 19, 2006.

ADDRESSES: Direct all written comments to Diane Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dhynek@doc.gov,* ((202) 482–0266).

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the survey and instructions to Christopher Emond, Chief, Special Surveys Branch, International Investment Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9826; fax: (202) 606–5318; or via the Internet at *christopher.emond@bea.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, obtains quarterly data from financial services providers that have receipts from or payments to unaffiliated foreign persons in the financial services covered by the survey. The data are needed to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The data from the survey are primarily intended as general purpose statistics. They are needed to answer any number of research and policy questions related to cross-border trade in services.

The form remains the same as in the past. No changes in the data collected or in exemption levels are proposed.

II. Method of Collection

Survey forms will be sent to U.S. companies each quarter; responses will be due within 45 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when the reports are due within 90 days after the close of the quarter. Potential respondents are U.S. financial services providers that have receipts from unaffiliated foreign persons in the financial services covered by the survey greater than $20 million for the prior calendar year or that are expected to be greater than $20 million in the current calendar year; or that have payments to unaffiliated foreign persons in the financial services covered by the survey greater than $15 million for the prior calendar year or that are expected to be greater than $15 million in the current calendar year . The data collected are cut-off sample data. In addition, estimates are developed based upon previously reported or estimated data for non-respondents, including those companies that fall below the reporting threshold for the survey.

III. Data

OMB Number: 0608–0065.
Form Number: BE–85.
Type of Review: Regular submission.
Affected Public: U.S. financial services companies that transact financial services with unaffiliated foreign persons.
Estimated Number of Respondents: 125 per quarter; 500 annually.

Estimated Time Per Response: 10 hours.

Estimated Total Annual Burden Hours: 5,000 hours.

Estimated Total Annual Cost: $200,000 (based on an estimated reporting burden of 5,000 hours and an estimated hourly cost of $40).

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2006.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E6–3948 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before 5 p.m. May 19, 2006.

ADDRESSES: Direct all written comments to Diane Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dhynek@doc.gov*, ((202) 482–0266).

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the survey and instructions to Christopher Emond, Chief, Special Surveys Branch, International Investment Division, (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9826; fax: (202) 606–5318; or via the Internet at *christopher.emond@bea.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Form BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, obtains quarterly data from U.S. insurance companies that have engaged in reinsurance transactions with foreign persons, that have earned premiums from, or incurred losses to, foreign persons in the capacity of primary insurers, or that have engaged in international sale or purchase transactions in auxiliary insurance services. The data are needed to monitor U.S. international trade in insurance services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on insurance services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The data from the survey are primarily intended as general purpose statistics. They are needed to answer any number of research and policy questions related to cross-border trade in services.

The form remains the same as in the past. No changes in the data collected or in exemption levels are proposed.

II. Method of Collection

Survey forms will be sent to U.S. insurance companies each quarter; responses will be due within 60 days after the close of each calendar quarter, except for the final quarter of the calendar year, when reports are due within 90 days after the close of the quarter. Potential respondents are those U.S. insurance companies that, with respect to transactions with foreign persons, have premiums earned or losses on reinsurance assumed; premiums incurred or losses on reinsurance ceded; premiums earned or losses on primary insurance; or sales or purchases of auxiliary insurance services greater than $8 million (positive or negative) for the prior calendar year or that are expected to be greater than $8 million (positive or negative) in the current calendar year. The data collected are cut-off sample data. In addition, estimates are developed based upon previously reported or estimated data for non-respondents, including those U.S. insurance companies that fall below the reporting threshold for the survey.

III. Data

OMB Number: 0608–0066.

Form Number: BE–45.

Type of Review: Regular submission.

Affected Public: U.S. insurance companies that transact with foreign persons in insurance services.

Estimated Number of Respondents: 225 per quarter; 900 annually.

Estimated Time Per Response: 8 hours.

Estimated Total Annual Burden Hours: 7,200 hours.

Estimated Total Annual Cost: $288,000 (based on an estimated reporting burden of 7,200 hours and an estimated hourly cost of $40).

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2006.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E6–3949 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Notice of Amended Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea.

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

SUMMARY: On February 13, 2006, the Department of Commerce (the Department) published its final results of the eleventh administrative review for certain corrosion–resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) for the period from August 1, 2003 through July 31, 2004. *See Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), (*Final Results*).

We are amending our *Final Results* to correct a ministerial error made in the calculation of the dumping margin for Union Steel Manufacturing Co., Ltd. (Union), pursuant to section 751 (h) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8362.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2006, the Department published its final results of the eleventh administrative review for certain corrosion–resistant carbon steel flat products (CORE) from Korea for the period from August 1, 2003 through July 31, 2004. *See Final Results.*

On February 13, 2006, pursuant to 19 CFR 351.224(c), Pohang Iron & Steel Company, Ltd. and Pohang Coated Steel Co., Ltd., (collectively, the POSCO Group) submitted comments alleging ministerial errors. On February 17, 2006, United States Steel Corporation (U.S. Steel) requested that the Department correct certain alleged ministerial errors. On February 15 and 22, 2006, pursuant to 19 CFR 351.224(c)(3), Mittal Steel USA ISG Inc. (Mittal); and Dongbu Steel Co., Ltd. (Dongbu), the POSCO Group and Union (collectively, respondents), submitted rebuttal comments regarding ministerial errors.

The Department received one clerical error allegation from the POSCO Group regarding the treatment of the POSCO Group's indirect selling and commission expenses and two clerical error allegations from U.S. Steel regarding calculation of constructed export price profit for Union, and the treatment of respondents' laminated products by the Department. Respondents argued in their rebuttal briefs that the Department should reject U.S. Steel's clerical error allegations submission because it was filed untimely. On February 13, 2006, the Department granted an extension to U.S. Steel until February 17, 2006 to file its comments.[1]

Scope of the Order

This order covers cold–rolled (cold–reduced) carbon steel flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion–resistant flat–rolled products of nonrectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin–free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Amended Final Results of Review

After analyzing all interested parties' comments and rebuttal comments, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224, that the Department has made a ministerial error in the final results calculation for Union in this administrative review. For a detailed discussion of all ministerial errors, and our analysis, *see* Memorandum from Victoria Cho, Jolanta Lawska and Preeti Tolani to Melissa Skinner, re: Allegations of Ministerial Errors, dated March 13, 2006 (Amended Final Issues and Decision Memorandum).

Therefore, in accordance with section 751(h) of the Act, we are amending the final results of sales at less than fair value in the antidumping duty administrative review of CORE from Korea for the period August 1, 2003 to July 31, 2004. As a result of correcting the ministerial error discussed in the Amended Final Issues and Decision Memorandum, Union's weighted–average dumping margin increased from 1.54 percent to 1.60 percent. For the remaining respondents, the weighted–average dumping margins remain the same. *See Final Results.*

Duty Assessment and Cash Deposit Requirements

The Department will determine, and U.S. Customs and Border Protection

[1] *See* The Department's February 13, 2006, letter to Skadden, Arps, Slate, Meagher and Flom, LLP.

(CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the amended final results of this review, where injunctions are not in place.

Further, the following cash–deposit requirements will be effective upon publication of these final amended results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final amended results, as provided by section 751(a)(2)(C) of the Act. (1) for subject merchandise exported by Union the cash–deposit rate will be 1.60 percent. (2) For Dongbu, HYSCO and POSCO the cash deposit rate will remain as established in the *Final Results*. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

These final amended results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and (h), and 777(i)(1) of the Act, and 19 CFR 351.224.

Dated: March 13, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–3989 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Postponement of Time Limits for New Shipper Antidumping Duty Reviews in Conjunction With Administrative Review

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

SUMMARY: On February 16, 2006, and February 21, 2006, in accordance with 19 CFR 351.214(j)(3), Xuzhou Jinjiang Foodstuffs Co., Ltd. ("Jinjiang") and Xiping Opeck Food Co. Ltd. ("Opeck"), respectively, agreed to waive the time limits in section 351.214(i) of the Department of Commerce's ("the Department") regulations so that the Department may conduct the new shipper reviews of freshwater crawfish tail meat from the People's Republic of China ("PRC"), for the period September 1, 2004, through August 31, 2005, concurrently with the administrative review for the same period. Therefore, pursuant to Opeck and Jinjiang's requests and in accordance with the Department's regulations, we will conduct the administrative and new shipper reviews concurrently. The deadline for the preliminary results for the new shipper reviews, originally scheduled for May 1, 2006, will now be June 2, 2006, and the estimated deadline for the finals results will now be September 30, 2006.

EFFECTIVE DATE: March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Erin Begnal, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1386 or (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2005, and September 21, 2005, the Department received timely requests from Opeck and Jinjiang, respectively, to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. On November 4, 2005, the Department initiated these new shipper antidumping duty reviews covering the period September 1, 2004, through August 31, 2005. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 70 FR 67138 (November 4, 2005). On September 30, 2005, the petitioners, the Crawfish Processors Alliance, requested an administrative review of several companies. On October 25, 2005, the Department published in the **Federal Register** a notice announcing the initiation of the 2004–2005 administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 61601 (October 25, 2005).

Postponement of New Shipper Review

On February 16, 2006, and February 21, 2006, Jinjiang and Opeck, respectively, in accordance with section 351.214(j)(3) of the Department's regulations, agreed to waive the applicable time limits for these new shipper reviews so that the Department might conduct these new shipper reviews concurrently with the 2004/2005 administrative review of freshwater crawfish tail meat from the PRC. *See* letter from Jinjiang requesting alignment with administrative review (February 16, 2006); letter from Opeck requesting alignment with administrative review (February 21, 2006). Pursuant to Opeck and Jinjiang's requests, and in accordance with section 351.214(j)(3) of the Department's regulations, we will conduct this new shipper review concurrently with the September 1, 2004, through August 31, 2005, administrative review of freshwater crawfish tail meat from the PRC. Therefore, the preliminary results of the antidumping new shipper review, as well as the administrative review, will be due 245 days from the last day of the administrative review period, *i.e.*, June 2, 2006. *See* section 351.213(h) of the Department's regulations. The estimated deadline for the final results in these new shipper reviews as well as the administrative review is September 30, 2006.

This notice is published in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(j)(3).

Dated: March 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–3987 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Notice of Rescission of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina

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

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Argentina. This review covers one manufacturer/exporter of the subject merchandise, Siderca S.A.I.C. (Siderca). The Department is now rescinding this review based on record evidence indicating that the respondent had no entries of subject merchandise during the period of review (POR). The POR is August 1, 2004 through July 31, 2005.

EFFECTIVE DATE: March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD

Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482 2924 (Baker), (202) 482–0649 (James).

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published the antidumping duty order on OCTG from Argentina. See Antidumping Duty Order: Oil Country Tubular Goods from Argentina, 60 FR 41055 (August 11, 1995). On August 1, 2005, we published in the **Federal Register** a notice of opportunity to request administrative reviews. *See Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005, United States Steel Corporation (petitioner) requested that the Department conduct an administrative review of sales of the subject merchandise made by Siderca.

On September 28, 2005, the Department published a notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 56631 (September 28, 2005). The Department issued its antidumping duty questionnaire to Siderca on October 3, 2005. In response, Siderca stated in an October 24, 2005, submission that it had no entries for consumption of subject merchandise of OCTG during the POR, and requested that the Department rescind the administrative review with respect to Siderca.

On January 24, 2006, the Department placed on the record of the review copies of documents regarding entries of subject merchandise from Argentina that it obtained from Customs and Border Protection (CBP). On February 2, 2006, the Department issued a letter to petitioners, domestic interested parties, and Siderca stating that the Department intended to rescind the review. We invited parties to submit comments on our intent to rescind the review. We requested that any comments be submitted by February 9, 2006. We received no comments.

Period of Review

The POR is August 1, 2004 through July 31, 2005.

Scope of the Review

OCTG are hollow steel products of circular cross-section, including oil well casing and tubing of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products).

This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium. Drill pipe was excluded from this order beginning August 11, 2001. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630 (July 25, 2001).

The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Rescission of Review

On October 24, 2005, Siderca informed the Department that it did not ship OCTG to the United States during the POR, and requested that we rescind the administrative review. The Department subsequently obtained and reviewed entry documents from CBP, and found no evidence that Siderca had knowledge that any of its production was destined for the United States. In a February 2, 2006, letter to parties, we requested comments from parties on this determination, and received no comments. Therefore, based on our review of CBP documents, we are satisfied that there were no entries of subject merchandise subject to this administrative review. Accordingly, we are rescinding the review.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Because the evidence on the record shows that there were no entries of OCTG made by Siderca during the POR, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(3). The Department will issue appropriate assessment instructions to CBP within fifteen days of publication of this notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) of the Tariff Act of 1930 (as amended) and 19 CFR 351.213(d)(4).

Dated: March 13, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–3988 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–820]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Wire Rod from Italy

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

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on stainless steel wire rod (SSWR) from Italy. Based on this information, we preliminarily determine that: 1) Acciaierie Valbruna S.p.A. (Valbruna S.p.A.) is the successor–in-interest to Acciaierie Valbruna S.r.l. (Valbruna S.r.l.) and its subsidiary Acciaierie Bolzano S.p.A. (Bolzano S.p.A.), a respondent in the less–than-fair–value (LTFV) investigation; and 2) merchandise from Acciaierie Valbruna S.p.A. should be excluded from the antidumping duty order. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 20, 2006.

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

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1998, the Department published in the **Federal Register** (63 FR 49327) the antidumping duty order on SSWR from Italy. Valbruna S.r.l. and its affiliate Bolzano S.p.A. were excluded from the order because their dumping margin was *de minimis*. On January 26, 2006, Valbruna S.p.A. submitted a written request that the Department conduct a changed circumstances review in order to clarify for U.S. Customs and Border Protection (CBP) that Valbruna S.p.A. is the successor–in-interest to Valbruna S.r.l./Bolzano S.p.A. and that subject merchandise produced by this entity should not be subject to antidumping duties. Valbruna S.p.A. requested that the result of the Department's changed circumstances review be retroactive to December 16, 1998, the effective date of Valbruna S.r.l.'s name and corporate change to Valbruna S.p.A. On January 30, 2006, the Department requested that Valbruna S.p.A. supplement this request for a changed circumstances review by addressing the four factors normally examined by the Department in successor–in-interest determinations: changes in (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. On February 8, 2006, Valbruna submitted this information to the Department. Further, on March 7, 2006, Valbruna S.p.A. submitted information to address additional questions raised by the Department on March 3, 2006.

Scope of Order

For purposes of this order, SSWR comprises products that are hot–rolled or hot–rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot–rolling or hot–rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold–finished into stainless steel wire or small–diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire–drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the order. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max	Chromium	19.00/21.00
Manganese	2.00 max	Molybdenum	1.50/2.50
Phosphorous	0.05 max	Lead	added (0.10/0.30)
Sulfur	0.15 max	Tellurium	added (0.03 min)
Silicon	1.00 max		

K–M35FL

Carbon	0.015 max	Nickel	0.30 max
Silicon	0.70/1.00	Chromium	12.50/14.00
Manganese	0.40 max	Lead	0.10/0.30
Phosphorous	0.04 max	Aluminum	0.20/0.35
Sulfur	0.03 max		

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Initiation and Preliminary Results of Review

In its January 26, 2006, February 8, 2006, and March 7, 2006, submissions to the Department, Valbruna S.p.A. provided information to the Department to demonstrate that it is the successor–in-interest to Valbruna S.r.l./Bolzano S.p.A. and that subject merchandise produced by it should not be subject to antidumping duties given that Valbruna S.r.l./Bolzano S.p.A. were excluded from the antidumping duty order. *See* 63 FR 49327 (Sept. 15, 1998).

Thus, in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216 and 351.221(a), the Department is initiating a changed circumstances review to determine whether Valbruna S.p.A. is the successor–in-interest to Valbruna S.r.l./Bolzano S.p.A. and thus entitled to exclusion from the antidumping duty order on SSWR from Italy.

Valbruna S.p.A. has presented evidence to establish a *prima facie* case that neither its change in corporate form and name from Valbruna S.r.l. to Valbruna S.p.A. nor its subsequent merger with its wholly owned subsidiary, Bolzano S.p.A., affected the company's operations (*i.e.*, management, production facilities, supplier relationships, or customer relationships) so that they are materially dissimilar to those of its predecessor. As a consequence, we find that it is appropriate to issue the preliminary results of our review in combination with the notice of initiation of the changed circumstances review in accordance with 19 CFR 351.221(c)(3)(ii). Because the evidence indicates that Valbruna S.p.A. has the same corporate structure and operations as Valbruna S.r.l./Bolzano S.p.A., we preliminarily determine that merchandise from Valbruna S.p.A. should be excluded from the antidumping duty order. Thus, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct CBP to liquidate, without regard to

antidumping duties, all entries entered, or withdrawn from warehouse, for consumption on or after December 16, 1998, the date of Valbruna S.r.l.'s name change to Valbruna S.p.A. This action is in accordance with the Department's practice of applying the results of changed circumstances determinations retroactively where the company in question was never subject to the order. *See Certain Hot–Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Changed–Circumstances Antidumping and Countervailing Duty Administrative Review*, 64 FR 66880, 66881 (Nov. 30, 1999). For further discussion of this issue, see the memorandum from Irene Darzenta Tzafolias to Stephen J. Claeys, entitled "Successor–In-Interest Determination for Acciaierie Valbruna S.r.l. in the Changed Circumstances Review of Stainless Steel Wire Rod from Italy," dated concurrently with this notice.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 14 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.209. The Department will publish the final results of the changed circumstances review including the results of its analysis of any issues raised in any such comments.

This initiation of review, preliminary results of review, and notice are in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: March 13, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–3990 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Certain Pasta From Turkey: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review

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

DATES: *Effective Date:* March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Audrey Twyman, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0182 and (202) 482–3534, respectively.

Background

On July 24, 1996, the Department published in the **Federal Register** (61 FR 38546) the countervailing duty order on certain pasta from Turkey. On July 1, 2005, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of this countervailing duty order (70 FR 38099). We received one request for review on July 29, 2005, and initiated the review for calendar year 2004, on August 29, 2005 (70 FR 51009). The preliminary results for this review are currently due no later than April 3, 2006.

Extension of Time Limits for Preliminary Results

Section 7512(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 the final results of review 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.

We currently analyzing supplemental information provided by the respondent and the Government of Turkey in this review. Because the Department requires additional time to review, analyze, and, if necessary, to issue additional supplemental questionnaires, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by April 3, 2006). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than June 5, 2006, 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: March 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–2647 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031006C]

Marine Mammal Authorization Program Integration of Registration for Selected Atlantic Ocean, Gulf of Mexico, and Caribbean Fisheries

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

ACTION: Notice of integrated registration program for Southeast fisheries.

SUMMARY: NMFS is providing notice that it is increasing the number of fisheries for which the Marine Mammal Authorization Program (MMAP) registration is integrated with existing state and Federal fishery licensing and permitting programs. NMFS is integrating MMAP registration for state fisheries permitted through the states of North Carolina, South Carolina, Georgia, Florida, Louisiana, Alabama, Mississippi, Texas, Puerto Rico, and the U.S. Virgin Islands.

ADDRESSES: For east coast fisheries, MMAP marine mammal injury/mortality reporting forms may be obtained at the following Web address: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf* or from the following office:

NMFS, Southeast Regional office, Protected Resources Division, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Teletha Mincey.

FOR FURTHER INFORMATION CONTACT: Vicki Cornish, Southeast Regional Office, 727–824–5312; or Patricia Lawson, Office of Protected Resources, 301-713-2322. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the taking (defined as actual or attempted harassment, hunt, capture, or kill) of marine mammals, with certain exceptions. The MMAP provides an authorization for commercial fishermen that allows the incidental (i.e., non-intentional) taking of marine mammals during the course of commercial fishing operations. NMFS must annually publish a List of

Fisheries (LOF)(71 FR 247, January 4, 2006), which categorizes commercial fisheries based on the rates or likelihood of serious injury or mortality (bycatch) of marine mammals incidental to each fishery. Specifically, Category I fisheries are those with frequent bycatch; Category II fisheries have occasional bycatch; and Category III fisheries have a remote likelihood of or no known bycatch. All fishermen who participate in a Category I or II fishery must be registered with the MMAP to receive an Authorization Certificate, which authorizes their incidental taking of marine mammals. Participants in Category III fisheries are not required to register with the MMAP. Fishermen participating in any commercial fishery, regardless of category, are required to report all incidental injuries and mortalities of marine mammals to NMFS within 48 hours of returning from a fishing trip. For a complete description of requirements for fishermen participating in Category I, II, and III fisheries, please consult 50 CFR part 229, subpart A.

Rather than requiring all participants in Category I and II fisheries to register individually, the MMPA directs NMFS to integrate registration with existing state or Federal fishery permitting or licensing programs (section 118(c)(5)(A)). NMFS' goals for the integrated registration program include ensuring consistency in registration procedures across a greater number of fisheries, increasing the number of registrants to better reflect the level of participation in the fisheries, and conducting outreach to the fishing industry with regard to MMPA requirements. Using data from existing fishery licensing programs, the MMAP integration will reduce the registration burden on the fishing industry while facilitating the protection and conservation of marine mammals through increased outreach efforts. In a licensing system that is integrated with the MMAP, fishermen will no longer have to submit an MMAP Pregistration/renewal form or the $25 processing fee to NMFS in order to receive or renew their MMAP Authorization Certificates.

In the southeast U.S., MMAP integration has already been established for federally-permitted fisheries (67 FR 79905, December 31, 2002), but MMAP integration has not heretofore been established for state-permitted fisheries. For 2006 and beyond, NMFS will be integrating the MMAP registration process for all Southeast state-permitted fisheries as identified in the final 2005 LOF (71 FR 247, January 4, 2006). Southeast state fisheries include those permitted by the states of North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, Puerto Rico, and the U.S. Virgin Islands.

NMFS will make an annual data request to each of these states for permit or license-holder information. Using this information, NMFS will mail MMAP Authorization Certificates, marine mammal injury/mortality reporting forms, and other program information to each permit or license-holder. Fishermen who participate in an integrated Category I or II state fishery do not need to take any additional action to register under the MMAP, as long as they hold a valid state fishing permit or license for the affected fishery. However, fishermen who participate in state and/or Federal fisheries not yet integrated with the MMAP registration system (i.e., fisheries for which no Federal or state permits are required) must contact the NMFS, Southeast Regional Office, Protected Resources Division, in order to register and receive an MMAP authorization certificate. If a fisherman participating in a Category I or II fishery, who expects to receive automatic registration, does not receive their authorization certificate by March 31, 2006, or by January 1 of each calendar year thereafter, the fisherman should contact NMFS (see **FOR FURTHER INFORMATION CONTACT**) to inquire about the status of their registration. Alternatively, they may apply for registration directly, following the procedures in 50 CFR 229.4(b).

NMFS will work with the permit-issuing agencies in each state to identify and attempt to limit mailing of authorization certificates to only those participants in Category I and II fisheries. Some permit systems, however, do not allow identification of fishermen using specific gear types in a way that matches the fishery designation referenced in the LOF. In cases where NMFS or the state permit-issuing agency cannot confidently determine which specific fishery identified in the LOF each fishermen participates in, based on the permit or license information, NMFS may inadvertently issue Authorization Certificates to fishermen participating in Category III fisheries. This approach, which may be confusing to Category III fishermen who are not required to be registered under the MMAP, is necessary to ensure that fishermen who need to register with the MMAP are not unintentionally excluded.

Dated: March 13, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–3995 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031406F]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of Ecosystem Scientific and Statistical Committee (SSC) Meeting via Conference Call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Ecosystem SSC via Conference Call to discuss planning of an ecosystem modeling workshop to be held by the SSC later in the year.

DATES: The Conference Call will be held on April 5, 2006.

ADDRESSES: *Meeting address*: The meeting will be held via conference call and listening stations will be available. For specific locations see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813.348.1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Ecosystem Scientific and Statistical Committee (SSC) to discuss planning of an ecosystem modeling workshop to be held by the SSC later in the year. Specifically, the objectives of the conference call are to identify one, two, or three multispecies/ecosytem modeling projects that could be used to address some of the key policy issues facing the Council, and to identify ecosystem modeling experts who could be contracted to assist the SSC and to perform some of the pre-analyses prior to the workshop.

The conference call will begin at 10 a.m. EST and conclude no later than 11 a.m. EST. Listening stations are available at the following locations: The

Gulf Council office (see **ADDRESSES**), and the National Marine Fisheries Service (NMFS) offices as follows: Galveston, Texas, 4700 Avenue U, Galveston, Texas 77551, Rhonda O'Toole, 409.766.3500; St. Petersburg, Florida, 263 13th Avenue South, St. Petersburg, FL 33701, Barbara Niswander, 727.824.5305; and Panama City, Florida, 3500 Delwood Beach Road, Panama City, Florida 32408, Susanne Pacelli, 850.234.6541.

Copies of any related meeting materials can be obtained by calling the Council office at 813.348.1630.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least five working days prior to the meeting.

Dated: March 15, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3967 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031406D]

North Pacific Fishery Management Council; Notice of Public Meetings

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings April 5–11, 2006 at the Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska.

DATES: The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, April 3 and continue through Saturday April 8, 2006. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday April 3 and continue through Wednesday, April, 5, 2006.

The Council will begin its plenary session at 8 a.m. on Wednesday, April 5, continuing through April 11, 2006. All meetings are open to the public except executive sessions. The Enforcement Committee will meet Tuesday, April 4, from 9 a.m. to 12 p.m. in the Iliamna Room. The Ecosystem Committee will meet Tuesday, April 4, from 1 p.m. to 5 p.m. in the Iliamna Room.

ADDRESSES: Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: *Council Plenary Session*: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
   Executive Director's Report
   NMFS Management Report
   U.S. Coast Guard Report
   NMFS Enforcement Report
   Alaska Department of Fish & Game (ADF&G) Report (includes Board of Fisheries (BOF) Adak cod action)
   U.S. Fish & Wildlife Service Report
   Protected Species Report
   Pacific Northwest Crab Industry Advisory Committee
2. Community Development Communities (CDQs): Review Governor's CDQ allcation recommendations: Status report on CDQ cost recovery program; Initial review/ final action CDQ community eligibility regulatory amendment; Status report on Amendment 71.
3. Improved Retention/Improved Utilization (IR/IU): Final action on Amendment 80; Discuss alternatives for Maximum Retainable Amounts (MRA) adjustments.
4. Bering Sea Aleutian Island (BSAI) Pacific Cod Allocations: Final action on Amendment 85.
5. BSAI Trawl Catcher Vessel (CV) eligibility: review discussion paper and take action as necessary.
6. Gulf of Alaska (GOA) Groundfish Rationalization: Review discussion paper on skipper/crew provisions; review Critical Path analysis; review other information and revise alternatives/options as appropriate.
7. Halibut Guideline Harvest Levels (GHL): Final action on Halibut GHL regulations; Receive Halibut Charter Stakeholder Committee report and take action as necessary.
8. Groundfish Management: Initial review of Environmental Assessment/ Regulatory Impact Review to defer management of GOA Dark Groundfish; Review Experimental Fishery Permit for longline targeting of silvergrey rockfish; Progress report on BSAI Salmon Bycatch Amendment Package B; and Salmon Bycatch research workshop (SSC only).
9. Crab Management: Crab Overfishing Definitions update. (SSC only)
10. Scallop Management: Review and approve Scallop Stock Assessment Fishery Evaluation (SAFE).
11. Ecosystem Based Management: Receive Committee report and take action as necessary.
12. Research Priorities: Review and approve.
13. Staff Tasking: Review Committees and tasking, refine Vessel Management System (VMS) alternatives.
14. Other Business

The SSC agenda will include the following issues:

1. Salmon Research Workshop
2. Groundfish Management
3. Crab Overfishing
4. Scallop SAFE report
5. Research Priorities

The Advisory Panel will address the same agenda issues as the Council.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: March 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–3913 Filed 3–17–06; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled Volunteer and Service Recipient Survey Components of the Senior Corps Performance Surveys to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Nathan Dietz, at (202) 606–6663, (*Ndietz@cns.gov*). Individuals who use a

telecommunications device for the deaf (TTY-TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to Office of Information and Regulatory Affairs, Attn: Ms. Rachel Potter, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(a) By fax to: (202) 395–6974, Attention: Ms. Rachel Potter, OMB Desk Officer for the Corporation for National and Community Service; and

(b) Electronically by e-mail to: *Rachel_F._Potter@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments: A 60-day public comment Notice, regarding all the component surveys of the Senior Corps Performance Surveys was published in the **Federal Register** on November 25, 2005. This comment period ended on January 24, 2006. No public comments were received from this notice.

Description: The Corporation for National and Community Service (CNCS) is requesting comments on plans to conduct the Volunteer and Service Recipient Survey Components of the Senior Corps Performance Surveys for the three major programs, Foster Grandparent Program, Senior Companion Program, and RSVP (Retired and Senior Volunteer Program). This study is being conducted under contract with Westat, Inc. (#CNCSHQC03003, Task Order #WES03T001) to collect information about local project outcomes of volunteer service. This information is to be used by the Corporation in preparing its Annual Performance Reports as well as for responding to ad hoc requests from Congress and other interested parties.

Type of Review: Revision to an existing data collection.

Agency: Corporation for National and Community Service.

Title: Volunteer and Service Recipient Survey Components of the Senior Corps Performance Surveys.

OMB Number: 3045–0098.

Agency Number: None.

Affected Public: Foster Grandparent Program, Senior Companion Program, and RSVP (Retired and Senior Volunteer Program) volunteers.

Type of Respondents: Senior Corps volunteers and service recipients.

Total Respondents: 4,500.

Frequency: On occasion.

Estimated Total Burden Hours: 1,567 hours total for all respondents.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 14, 2006.

Robert T. Grimm, Jr.,

Director, Office of Research and Policy Development.

[FR Doc. E6–3970 Filed 3–17–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

DATES: March 23, 2006, from 8 a.m. to 5 p.m., and March 24, 2006, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Menger Hotel, 204 Alamo Plaza, San Antonio, Texas 78205.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Notice is being given less than 15 days prior to the Committee meeting because of an unavoidable delay in the development of the agenda. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than March 20, 2006.

Dated: March 14, 2006.

L.M. Bynum,

Alternate OSF Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–2628 Filed 3–17–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the Record of Decision (ROD) for the Supplemental Final Environmental Impact Statement (SFEIS) for the Proposed Addition of Maneuver Training Land at Fort Irwin, California

AGENCY: U.S. National Training Center and Fort Irwin, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of its ROD for the Proposed Addition of Maneuver Training Land at Fort Irwin, California. On 20 January 2006, the Army published a notice of availability of its SFEIS. The SFEIS reviewed the environmental, cultural, and socioeconomic impacts of five action alternatives associated with the addition of maneuver training land at Fort Irwin, as well as a No Action (status quo) alternative. Based on the SFEIS, the Army has demised to implement Alternative I, the East/West Alternative. Under this alternative, additional lands totaling approximately 150,510 acres would be added to the available training lands. The decision includes training in new areas to the east and west of the existing Fort Irwin, and in a portion of southern Fort Irwin previously off-limits to training. Expansion of the maneuver area of the National Training Center (FTC) provides an extended battle space (land and air) for training Army brigade-sized units according to the Army's training and combat operations. Today's Army can drive faster, shoot farther, and operate over wider ranges than the Army of 1981, when the FTC opened.

These advances in technology are the driving factor for this expansion.

Alternative I was chosen because it best meets the Army's need for additional training land. There are impacts to many natural resources expected as part of the proposed action. Mitigation has been proposed to offset the impacts identified in the SFEIS. Even taking into account this mitigation, however, there will still be significant impacts to threatened and endangered species, loss of vegetation cover, loss and disruption of soil surfaces, and loss of wilderness characteristics to adjacent wideness areas.

The decision also restates the army's continuing commitment to environmental stewardship by implementing mitigation and monitoring measurers to offset potential reverse environmental impacts associated with the preferred alternative, as identified in the SFEIS and the ROD.

ADDRESSES: Requests for copies of the Army's ROD may be made to: Ms.Jennifer Barry, NTC Land Expansion Program, ATTN: AFZJ–ST, Strategic Planning Division, P.O. 105004, Fort Irwin, California, 93210, or by calling (760) 380-6174, or by sending an e-mail to *Jennifer.Barry@Irwin.army.mil.*

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Jennifer Barry, or Mrs. Nicole Lileikis, AFZJ–SP Strategic Planning Division, P.O. 10309, Fort Irwin, CA 92311. Interested parties may also call (760) 380–6174.

SUPPLEMENTARY INFORMATION: The project involves acquisition of approximately 127,000 new acres on the east and southwest sides of the existing NTC and the return to training use of approximately 23,000 acres in the south that are currently restricted from military training. Implementation of the Preferred Alternative as outlined in the SFEIS will occur in a phased approach. Training will occur in the Eastgate parcel first, followed by the UTM 90 (the southern edge of Fort Irwin), and the last area on which training will begin will be the western area.

The Preferred alternative best meets the purpose and need for training at Fort Irwin and is crucial to achieving a trained military to provide for the current and future national security of the country.

The selected alternative has significant impacts, which are described in the SFEIS. Among these are impacts to the Desert Tortoise. The action also includes mitigation measures that will support conservation and management of the tortoise. The SFEIS discusses a Biological Opinion issued by the U.S. Fish and Wildlife Service on the effects of the proposed action on both the Desert Tortoise and another threatened or endangered species, the Lane Mountain Milk Vetch. The SFEIS also includes a Supplemental Biological Assessment prepared by the Army that addresses the crucial habitat of the Desert Tortoise.

Copies of the SFEIS ROD can be found at the following libraries for public reading: Library of Congress; Riverside Main Library; San Diego County Library; San Bernardino County Libraries at the following locations—Hesperia, San Bernardino, Apple Valley, Trona, Barstow, Big Bear, Lucerne Valley, Victorville, Wrightwood, and Yucca Valley.

The Record of Decision is also posted at the land Expansion Web site *http://www.fortirwinlandexpansion.com.*

Dated: March 14, 2006.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 06–2625 Filed 3–17–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors (BOA) to The President, Naval Postgraduate School (NPS)

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting is to elicit the advice of the board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between NPS and the Air Force Institute of Technology (AFIT). The board examines the effectiveness with which the NPS is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the NPS as the board considers pertinent. This meeting will be open to the public.

DATES: The meeting will be held on Tuesday, April 18, 2006, from 8 a.m. to 4 p.m. and on Wednesday, April 19, 2006, from 8 a.m. to 12 p.m. All written comments regarding the NPS BOA should be received by April 7, 2006, and be directed to President, Naval Postgraduate School (Attn: Jaye Panza), 1 University Circle, Monterey, CA 93943–5000 or by FAX 831–656–3145.

ADDRESSES: The meeting will be held at the Naval Postgraduate School, Herrmann Hall, 1 University Circle, Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Jaye Panza, Naval Postgraduate School, Monterey, CA 93943–5000, telephone number 831–656–2514.

Dated: March 9, 2006.

Eric Mcdonald,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–3979 Filed 3–17–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–304]

Application for Presidential Permit; Generadora del Desierto SA de C.V.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Generadora del Desierto SA de C.V. (GDD) has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the U.S. border with Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before April 19, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On September 23, 2005, GDD, a Mexican corporation and wholly-owned affiliate of North Branch Holding, LLC, filed an application with the Office of Electricity Delivery and Energy Reliability (OE) of the Department of Energy (DOE) for a Presidential permit. GDD proposes to construct a double-circuit 500-kilovolt (500-kV) electric transmission line across the U.S.-

Mexico international border. The proposed facilities would extend from a new electric power plant to be constructed by GDD approximately one mile south of the U.S.-Mexico border in San Luis Rio Colorado, Sonora, Mexico, cross the U.S.-Mexico international border, extend approximately 20 miles, north and connect to the existing Gila Substation owned and operated by Western Area Power Administration (Western). From the Gila Substation, the line would extend an additional four miles north and connect to the existing North Gila Substation owned and operated by Arizona Public Service Company.

In a related proceeding, North Branch Resources, LLC (NBR), also a North Branch Holding, LLC affiliate, has applied to Western to connect the proposed international transmission line and the Mexico power plant to Western's transmission system. If the interconnection request is granted by Western and the proposed project proceeds, NBR proposes that Western construct, own, operate, and maintain the new transmission facilities in the U.S. at the expense of NBR. Western is considering this proposal and may ultimately assume those responsibilities. If that were to happen, Western would become a co-applicant for the Presidential permit.

Since the restructuring of the electric industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended. In furtherance of this policy, DOE intends to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Leonard H. Singer, Esq., Couch White, LLP, 540 Broadway, P.O. Box 22222, Albany, New York, 12201 and Joseph Bojnowski, North Branch Resources, LLC, 6 North Branch Road, Newton, CN, 06470.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application. In addition, DOE must consider the environmental impacts of the proposed action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act (NEPA). OE and Western propose to prepare a single Environmental Impact Statement (EIS) to address the environmental impacts of the Federal actions of granting the requested Presidential permit and allowing connection of the international transmission line and Mexico power plant to the Federal transmission system. The EIS will be prepared in accordance with the requirements of the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR part 1021).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov/programs/electricityregulation/*. Upon reaching the Home page, select "Pending Proceedings."

Issued in Washington, DC, on March 13, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–3991 Filed 3–17–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8046–3]

Notice of Charter Renewal for the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Charter for the Environmental Protection Agency's Environmental Financial Advisory Board (EFAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. Section 9(c). The purpose of EFAB is to provide advice and recommendations to the Administrator of EPA on issues associated with environmental financing. It is determined that EFAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Vanessa Bowie, Environmental Finance Program, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (Mailcode 2731R), Telephone (202) 564–5186, or *bowie.vanessa@epa.gov*.

Dated: January 30, 2006.

Joseph Dillon,

Director, Office of Enterprise, Technology and Innovation.

[FR Doc. E6–4002 Filed 3–17–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8046–4]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, request for public comment.

SUMMARY: In accordance with section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement concerning the Patrick Bayou Superfund Site with The Lubrizol Corporation, Occidental Chemical Corporation, and Shell Oil Company on behalf of Deer Park Refining Limited Partnership and Shell Chemical LP.

Pursuant to 42 U.S.C. 9607, the settlement requires the settling parties to pay past response costs incurred through September 30, 2003 (amounting to $211,192.30), plus interest, to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before April 19, 2006.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Patrice Miller, 6SF–AC, 1445 Ross Avenue, Dallas, Texas 75202–2733, or by calling (214) 655–6712. Comments should reference the Patrick Bayou Superfund Site, Deer Park, Texas, and EPA Docket Number 6–03–05, and should be addressed to Patrice Miller at the address listed above.

FOR FURTHER INFORMATION CONTACT: Anne Foster, 1445 Ross Avenue, Dallas, Texas 75202–2733, or call (214) 665–2169.

Dated: March 10, 2006.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E6–3998 Filed 3–17–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 82]

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. The form will be used by customers who originally applied for a multibuyer policy using EIB 92–50. Our customers will be able to submit this form on paper or electronically.

DATES: Written comments should be received on or before April 19, 2006.

ADDRESSES: Direct all comments to Mr. David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB Room 10202, Washington, DC 20503 (202) 395–3897.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies.

Form Number: EIB 92–51.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: The form affects entities involved in the export of U.S. goods & services.

Estimated Annual Respondents: 2,176.

Estimate time per Respondent: ½ hour.

Estimated Annual Burden: 1,088.

Frequency of Reporting or Use: When applying for insurance coverage.

Dated: March 14, 2006.

Solomon Bush,

Agency Clearance Office.

BILLING CODE 6690–01–M

EXPORT IMPORT BANK OF THE UNITED STATES
APPLICATION FOR SPECIAL BUYER CREDIT LIMIT (SBCL)
UNDER MULTI-BUYER EXPORT CREDIT INSURANCE POLICIES

App. No. _____
(Ex-Im Bank Use Only)

(Please Print or Type)

1. Insured/ Exporter Name:		2. Broker (If none, state "None")	
Policy No.:	State:	Brokerage:	Broker No.:
Attn.:	Tel No.:	Attn.:	Tel No.:
Fax No.:	E-Mail:	Fax No.:	E-Mail:

3. Buyer Name: File No. _____
Address: (Ex-Im Bank Use Only)
City, Country:

4. Guarantor Name (if any): File No. _____
Address: (Ex-Im Bank Use Only)
City, Country:

5. (a) Products ☐ New ☐ Used

(b) Products Description _____

(c) Is each product produced or manufactured in the United States? ☐ Yes ☐ No

(d) Has at least one-half of the value, exclusive of price mark-up, been added by labor or material exclusively of U. S. origin?
☐ Yes ☐ No

(e) Are products listed on the United States Munitions List? (part 121 of Title 22 of the Code of Federal Regulations) ☐ Yes ☐ No

6.(a) Credit Limit Requested $ _____

(b) Value of orders received $ _____

(c) Down-payment, if any $ _____

(d) Requested SBCL effective date / / (mm/dd/yyyy)

(e) Payment terms requested	(Up to - number of days) Please check applicable box							
Payment Type	Sight	30	60	90	120	180	270	360
Cash Against Documents (CAD)	☐							
Sight Draft Documents Against Payment (SDDP)	☐							
Unconfirmed Irrevocable Letter of Credit (UILC)	☐	☐	☐	☐	☐	☐	☐	☐
Open Account		☐	☐	☐	☐	☐	☐	☐
Sight Draft Documents Against Acceptance (SDDA)		☐	☐	☐	☐	☐	☐	☐
Promissory Note		☐	☐	☐	☐	☐	☐	☐

EIB92-51 (04/06)

7.(a) Your credit experience with this buyer: If none ___ **(Check here for "new buyer")**

Year of first sale to buyer Year 20____

Year of first credit sale (exclude cash and confirmed L/Cs) Year 20____

Total export credit sales to buyer for the last three (3) years $ _____

Highest amount outstanding at any time over last twelve months $ _____

Payment terms extended	(Up to - number of days) Please check applicable boxes							
Payment Type	Sight	30	60	90	120	180	270	360
Cash Against Documents (CAD)	☐							
Sight Draft Documents Against Payment (SDDP)	☐							
Unconfirmed Irrevocable Letter of Credit (UILC)	☐	☐	☐	☐	☐	☐	☐	☐
Open Account		☐	☐	☐	☐	☐	☐	☐
Sight Draft Documents Against Acceptance (SDDA)		☐	☐	☐	☐	☐	☐	☐
Promissory Note		☐	☐	☐	☐	☐	☐	☐

(b) Describe buyer's payment history (check one)

☐ No Prior Experience ☐ Prompt/Discount ☐ 1-30 Days Slow ☐ 31-60 Days Slow ☐ more than 60 days slow

(c) Amount now owing $ _____ , as of _____ (Date).

(d) Amount now more than 60 days past due $ _____ (indicate maturity dates and explanation in an attachment).

(e) Has buyer offered any credit enhancement (security)? ☐ YES ☐ NO If yes, describe:

8. Describe any direct or indirect ownership interest or family relationship which exists between the insured and the buyer/guarantor or between the supplier and the buyer (or guarantor). If none, state "None". _____

9. Are there any extraordinary terms or conditions of sale: ☐ Yes ☐ No. If "Yes," please attach an explanation.

10. CREDIT AND FINANCIAL INFORMATION REQUIREMENTS* for Credit Limit Applications of:

Up to $100,000: Credit Agency Report, or a Trade Reference

$100,001- $300,000: Credit Agency Report and a Trade Reference

(The Buyer's audited or signed unaudited financial statements for the last 2 years may be substituted for the trade reference).

$300,001 to $1 million: Credit Agency Report and a Trade Reference and the Buyer's audited or signed unaudited financial statements for the last 2 fiscal years with notes.

over $1 million: Credit Agency Report and 2 Trade References and a Bank Reference and the Buyer's audited or signed unaudited financial statements for the last 3 fiscal years with notes.

* The applicant's credit experience with the Buyer as completed in question 7 may be substituted for a Trade Reference.

If fiscal year end statements are dated more than 9 months from the date of application, the Buyer's interim statements must be submitted.
If the Buyer has a Market Rating you may submit the rating, below, in place of the Credit and Financial Information.
If a Financial Institution (Bank) is the Buyer or Guarantor or if a letter of credit is used no Credit and Financial Information is necessary.

Market Rating: _____ **Source:** _____ **Rating Date:** _____

NOTE: See **Short Term Credit Standards** (EIB99-09) **for Buyers** to determine the likelihood of approval. All references and credit reports must be dated within 6 months of the application and show prompt credit experience for similar amounts and similar terms

11. CERTIFICATION OF PRODUCT USE AND REPRESENTATIONS:

(a) The applicant hereby certifies to the Export-Import Bank of the United States that, to the best of its knowledge and belief, the products* and services to be exported in the transaction described herein are principally for use as indicated below. (When a sale is made to entities such as distributors primarily for resale, the principal user is considered to be the original purchaser (the distributor), and part A should be checked. If, however, the applicant has knowledge or reason to believe that the products will be re-exported from the original buyer's country, please check part B.)

A ☐ By the buyer in the country specified above.

B ☐ If not, name the country where the product will be principally used _____

and by whom _____

* NOTE: The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade measures against them under section 201 of the Trade Act of 1974, see www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/completed/index.htm#safeguard click on 201. There may not be trade sanctions in force against them. For a list of products and Anti-Dumping or Countervailing Duty sanctions see: www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/antidump_countervailing/index.htm

(b) The applicant certifies that neither it, nor its Principals, have within the past 3 years been i) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Covered Transaction, ii) formally proposed for debarment, with a final determination still pending, iii) indicted, convicted or had a civil judgement rendered against it for any of the offenses listed in the Regulations, iv) 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 v) 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 i) through iv) in this paragraph.

The applicant further certifies that it has not and will not knowingly enter into any agreements in connection with the products and services to be exported in the transaction described herein, with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Covered Transaction. The term "Covered Transaction" shall have the meaning set forth in the Ex-Im Bank Debarment and Suspension Regulations at 12 C.F.R. Part 413 (Regulations).

In addition , the applicant further certifies that it has not, and will not engage in any activity in connection with this transaction that is a violation of i) 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), ii) the Arms Export Control Act, 22 U.S.C. 2751 et seq., iii) the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., oriv) the Export Administration Act of 1979, 50 U.S.C. 2401 et seq.; nor 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 its 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 document and any attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts, and if any of the certifications made herein become untrue, Ex-Im Bank will be promptly informed of such changes. The applicant further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 U.S.C. 1001 et seq.).

Notices: The applicant is hereby notified that information requested by this application is done so under authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 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 provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

By _____ _____ _____

Signature of Insured/Exporter | Print Name and Title | Date

Note: Please answer all questions and sign application. Applications not completely filled out or not submitted with required financial and credit information will be withdrawn.

Send, or ask your insurance broker to review and send, this application to
Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571.
The Ex-Im Bank website is <http://www.exim.gov>

EIB92-51 (04/06)

[FR Doc. 06–2622 Filed 3–17–06; 8:45 am]
BILLING CODE 6690–01–C

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 April 4, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. The Milner Limited Partnership, Aliceville, Alabama, Susan McKinzey Milner, general partner; to acquire voting shares of First National Bancshares of Central Alabama, Inc., and thereby indirectly acquire voting shares of First National Bank of Central Alabama, both of Aliceville, Alabama.

Board of Governors of the Federal Reserve System, March 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3974 Filed 3–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center 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 April 13, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire through its subsidiary, Capitol Development Bancorp Limited IV, Lansing, Michigan, 51 percent of the voting shares of Evansville Commerce Bank, Evansville, Indiana (in organization).

Board of Governors of the Federal Reserve System, March 14, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3966 Filed 3–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire Waterfield Mortgage Co., Fort Wayne, Indiana, and thereby indirectly acquire Union Federal Bank of Indianapolis, Indianapolis, Indiana, and engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–3975 Filed 3–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 051 0008]

Valassis Communications, Inc.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 12, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Valassis Communications, File No. 051 0008," to facilitate the organization of comments.

A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Geoffrey Green, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2641.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/03/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Valassis Communications, Inc. ("Valassis" or "Respondent"), a publisher of co-operative free-standing inserts ("FSIs") with its principal place of business located at 19975 Victor Parkway, Livonia, Michigan 48152. The agreement settles charges that Valassis violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by inviting its only FSI rival to collude so as to eliminate competition. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed order. The analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

I. The Complaint

The allegations of the complaint are summarized below:

FSIs are multi-page coupon booklets commonly found in Sunday newspapers across the country. FSIs are an efficient means for consumer packaged goods manufacturers and other firms to distribute coupons on a mass scale. For more than a decade, there have been only two U.S. publishers of FSIs: Valassis and News America Marketing ("News America"). On a typical Sunday, both Valassis FSIs and News America FSIs are distributed by hundreds of newspapers to over 50 million households.

A. The FSI Price War

Between 1998 and 2001, Valassis and News America each published approximately 50 percent of FSI pages. In June 2001, Valassis notified its clients of a five percent price increase, bringing Valassis' floor price from $6.00 for a full page per thousand inserts to $6.30. News America did not follow the Valassis price move. As a result, News America captured additional customers and built a substantial market share lead. In February 2002, Valassis abandoned its efforts to increase prices and sought to regain a 50 percent share of FSI pages, leading to FSI prices falling below $5.00 per page by 2004.

B. Valassis Invites its Competitor to Collude

In mid-2004, Valassis determined that its aggressive pursuit of greater market share was no longer serving the company's interests. Company executives developed a new strategy. Valassis decided to communicate to News America an offer to cease competing for News America customers, provided that News America ceased competing for Valassis customers. Valassis intended this offer to enable the firms to raise FSI prices within their respective uncontested domains and to end the FSI price war.

As a publicly traded corporation, Valassis holds a conference call with securities analysts on a quarterly basis. Any person may listen to the call live over the Internet or obtain a transcript of the call from the Valassis Web site. Valassis held its second quarter analyst call on July 22, 2004.[2] Valassis executives were aware that News America representatives would be monitoring the call, and they determined to use this conference call as the vehicle to communicate Valassis' offer to News America. To ensure that News America clearly understood the terms of the Valassis offer, including what Valassis expected in return from

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] A transcript of the earnings conference call is annexed to the complaint as Exhibit A.

News America, the President and Chief Executive Officer of Valassis, Alan Schultz, opened the earnings conference call by proposing the following:

1. Valassis would abandon its 50 percent market share goal. The company would be content to maintain the share (mid-40s percent) that it then held.

2. Valassis would aggressively defend its existing customers and price at whatever level was necessary to retain its existing market share.

3. With regard to customers with expiring contracts with News America, effective July 26, 2004, Valassis would observe a floor price of $6.00 per page and $3.90 per half page. This was the floor price that had been in effect prior to the price war. That meant that for News America's historical customers, Valassis would submit bids at a level substantially above prevailing market prices.

4. With regard to the small number of customers that divide their FSI business between Valassis and News America, Valassis would price its share at whatever level was necessary to retain its historical share of that customer's business. If the customer wanted Valassis to take more than its historical share, however, Valassis would price that portion of the business at the new ($6.00) price floor.

5. As to four bids that Valassis already had outstanding to News America customers, Valassis would honor those bids only until August 1, 2004, and thereafter all News America customers would be quoted at the new higher price.

6. Finally, Valassis would monitor News America's response to this invitation, looking for "concrete evidence" of reciprocity in "short order." If News America continued to compete for Valassis customers and market share, then Valassis would return to its previous pricing strategy, and the price war would resume.

According to the allegations of the complaint, Valassis made the foregoing proposal with the intent to facilitate collusion and without a legitimate business purpose. Although the proposal was made in the context of an analyst call, Valassis' statements provided information that would not ordinarily have been disclosed to the securities community, and the company would not have made the statements except in the expectation that its sole competitor would be listening. Far from being normal guidance to its investors or the marketplace with respect to the company's future business plans, Valassis' statements described with precision the terms of its invitation to collude to News America. If the invitation had been accepted by News America, the result likely would have been higher FSI prices and reduced output.[3]

II. Legal Analysis of Invitations To Collude

Invitations to collude have been judged unlawful under Section 2 of the Sherman Act as acts of attempted monopolization,[4] as well as under the Federal wire and mail fraud statutes.[5] In addition, the Commission has entered into consent agreements in several cases alleging that an invitation to collude—though unaccepted by the competitor—violated Section 5 of the FTC Act.[6]

The preceding line of authority rejects the proposition that competition would be adequately protected if antitrust enforcement were directed only at consummated cartel agreements. Several legal and economic justifications support the imposition of liability upon firms that communicate an invitation to collude where acceptance cannot be proven. First, it may be difficult to determine whether a particular solicitation has or has not been accepted. Second, even an unaccepted solicitation may facilitate coordinated interaction by disclosing the solicitor's intentions or preferences. Third, the anti-solicitation doctrine serves as a useful deterrent against conduct that is potentially harmful and that serves no legitimate business purpose.[7]

Previous FTC actions challenging invitations to collude generally have addressed private conversations between the respondent and its competitor.[8] The complaint here alleges that Valassis chose to communicate its offer through a public means. The Commission has concluded that the fact of public communication should not, without more, constitute a defense to an invitation to collude, particularly where market conditions suggest that collusion, if attempted, likely would be successful (here, a durable duopoly). Private negotiation—in a proverbial smoke-filled room—may well be the most efficient route for would-be cartelists wishing to reach an accommodation. But it is clear that anticompetitive coordination also can be arranged through public signals and public communications, including speeches, press releases, trade association meetings and the like.[9] Given the obligation under the securities laws not to make false and misleading statements with regard to material facts, Valassis' invitation to collude, made in the context of a conference call with analysts, may have been viewed by News America as even more credible than a private communication. If such public invitations to collude were per se lawful, then covert invitations to collude would be unnecessary.

In evaluating cartels, antitrust law does not afford immunity to agreements that are brokered in public; courts recognize that a public venue does not necessarily mitigate the threat to competition.[10] The same approach should govern invitations to collude. Liability should depend upon the substance and context of the communication, including issues of intent, likely effect, and business justification, and should not turn solely on the arena in which the communication occurs.

In its earnings call, Valassis communicated to rival News America proposed terms of coordination for the FSI market, a longstanding duopoly, and did so with extraordinary specificity: Valassis would cease competing for News America customers, *provided that* News America likewise ceased competing for Valassis customers. In addition, Valassis proposed that prices should be restored by both firms to the pre-price war level of $6.00 per page and $3.90 per half page per thousand booklets and described how business with shared customers and outstanding bids to News America's customers would be handled. Much of this information would not have been publicly communicated, even to investors and analysts interested in Valassis' business strategy, but for Valassis' effort to induce collusion. Under such limited circumstances, the

[3] Evidence reviewed in the course of the Commission's investigation did not support a charge that the anticompetitive agreement proposed by Valassis was consummated.

[4] *United States* v. *American Airlines*, 743 F.2d 1114 (5th Cir. 1984), cert. dismissed, 474 U.S. 1001 (1985).

[5] *United States* v. *Ames Sintering Co.*, 927 F.2d 232 (6th Cir. 1990).

[6] MacDermid, Inc., ___ F.T.C. ___ (C–3911) (1999); Stone Container Corp., 125 F.T.C. 853 (1998); Precision Moulding Co., 122 F.T.C. 104 (1996); YKK (USA) Inc., 116 F.T.C. 628 (1993); A.E. Clevite, Inc., 116 F.T.C. 389 (1993); Quality Trailer Products Corp., 115 F.T.C. 944 (1992).

[7] *See generally* P. Areeda & H. Hovenkamp, VI Antitrust Law ¶ 1419 (2003).

[8] In *Stone Container Corp.*, 125 F.T.C. 853 (1998), the Commission alleged that an invitation to collude consisting of both public and private communications was illegal.

[9] *See, e.g.*, David F. Lean, Jonathan D. Ogur, and Robert P. Rogers, *Does Collusion Pay * * * Does Antitrust Work?*, 51 Southern Journal of Economics 828, 839 (1985).

[10] *See* FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411 (1990); In re Petroleum Products Antitrust Litig., 906 F.2d 432 (9th Cir. 1990); *San Juan Racing Assoc.* v. *Asociacion de Jinetes, Inc.*, 590 F.2d 31, 32 (1st Cir. 1979).

Commission may challenge an invitation to collude under Section 5 of the FTC Act even where the conduct did not result in competitive harm.

Corporations have many obvious and important reasons for discussing business strategies and financial results with shareholders, securities analysts, and others. For this reason, the Commission is extremely sensitive to the fact that antitrust intervention involving a corporation's public communications must take great care not to unduly chill legitimate speech.[11]

In this case, the public statements made by Valassis went far beyond a legitimate business disclosure and presented substantial danger of competitive harm. The Commission's complaint alleges that Valassis made a strategic decision to use and did use its analyst call to communicate to News America information that was essential for News America to understand how Valassis proposed to divide up the market and how it proposed to transition from competition to coordination. For example, Valassis specified how it proposed to split the business of those customers it shared with News America and explained what its pricing would be with regard to pending bids to four News America customers. Valassis historically had not provided information of this type to the securities community, analysts had no need for the information and did not report it, and Valassis had no legitimate business justification to disclose the information. Valassis would not have disclosed the detailed information except in the expectation that News America would be monitoring the call and except for the purpose of conveying its proposal to News America.

III. The Proposed Consent Order

Valassis has signed a consent agreement containing the proposed consent order. The proposed consent order enjoins Valassis from inviting collusion and from actually entering into or implementing a collusive scheme.

More specifically, Valassis would be enjoined from inviting an FSI competitor to divide markets, to allocate customers, or to fix prices. The proposed consent order also prohibits Valassis from entering into, participating in, implementing, or otherwise facilitating an agreement with any FSI competitor to divide markets, to allocate customers, or to fix prices.

The proposed order would not interfere with Valassis' efforts to negotiate prices with prospective customers, and it would permit Valassis to provide investors with considerable information about company strategy. The proposed order also includes a safe harbor provision permitting Valassis to communicate publicly any information the public disclosure of which is required by the Federal securities laws.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–3965 Filed 3–17–06; 8:45 am]

BILLING CODE 6750–01–P

[11] For example, the Commission would likely not interfere with a public communication that is required by the securities laws. Here, the Commission has been cited to no other instance where a corporation disclosed publicly in securities filings or other fora the detailed descriptions of its future pricing plans and business strategies alleged in this complaint.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005E–0251]

Determination of Regulatory Review Period for Purposes of Patent Extension; MYCAMINE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MYCAMINE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MYCAMINE (micafungin sodium). MYCAMINE is indicated for treatment of patients with esophageal candidiasis and prophylaxis of *Candida* infections in patients undergoing hematopoietic stem cell transplantation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MYCAMINE (U.S. Patent No. 5,376,634) from Astellas Pharma, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MYCAMINE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MYCAMINE is 2,546 days. Of this time, 1,493 days occurred during the testing phase of the regulatory review period, while 1,053 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: March 29, 1998. The applicant claims February 26, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 29, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 29, 2002. FDA has verified the applicant's claim that the new drug application (NDA) for MYCAMINE (NDA 21–506) was initially submitted on April 29, 2002.

3. *The date the application was approved*: March 16, 2005. FDA has verified the applicant's claim that NDA 21–506 was approved on March 16, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,814 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination byMay 19, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 18, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions are to be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 13, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–3956 Filed 3–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–06–8001]

Memorandum of Understanding Between the United States Food and Drug Administration, the National Cancer Institute, and the Centers for Medicare and Medicaid Services

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The purpose of this Memorandum of Understanding (MOU) is to set forth an agreement between the Food and Drug Administration (FDA), the National Cancer Institute (NCI), and the Centers for Medicare and Medicaid Services (CMS) to develop strategic plans, set priorities, and leverage resources and expertise from multiple sources, including the private sector, toward the goal of improving the clinical utility of biomarker technologies as diagnostic and assessment tools that facilitate the development of safer and more effective cancer therapies. This collaboration among FDA, NCI, and CMS shall be known as the Oncology Biomarker Qualification Initiative.

DATES: The agreement became effective January 23, 2006.

FOR FURTHER INFORMATION CONTACT:

For FDA: Wendy R. Sanhai, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane (HF–1), Rockville, MD 20857, 301–827–7861, FAX: 301–443–9718.

For NCI: Gregory J. Downing, Office of Technology and Industrial Relations, Office of the Director, National Cancer Institute, 31 Center Dr., MSC 2580—rm. 10A52, Bethesda, MD 20892, 301–496–1550, FAX: 301–496–7807.

For CMS: Peter Bach, Centers for Medicare and Medicaid Services, 20 Independence Ave., SW. (rm. 314G), Washington, DC 20201, 202–205–5610, FAX: 202–690–6262.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: March 7, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

FOOD AND DRUG ADMINISTRATION (FDA)

THE

THE NATIONAL CANCER INSTITUTE (NCI)

AND THE

CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)

FOR THE

FDA/NCI/CMS ONCOLOGY BIOMARKER QUALIFICATION INITIATIVE

Whereas extensive cross-sector and multi-disciplinary efforts are needed to understand and develop the clinical utility of a new generation of biomarker[1] technologies, which can be used for detection, diagnostic, and clinical assessment tools in cancer research;

Whereas such new biomarker technologies, if proven effective in assessing therapeutic response in clinical trials and thereby "qualified" have the potential to be adopted by the FDA as assessment tools for use in FDA guidance on cancer drug development;

Whereas CMS is interested in the development of evidence to inform reimbursement decisions making about existing or new treatment regimens;

Whereas the NCI is interested in eliminating suffering and death due to cancer and seeks to develop technologies to improve the detection, diagnosis, treatment, and prevention of cancer;

Whereas the private sector has expressed interest in further scientific exploration of biomarkers and associated technologies to enhance diagnostics and therapeutic development;

Whereas FDA, with its unique perspective on research and development activities and in-depth understanding of clinical trial design, regulatory policy, and scientific know-how in reviewing medical products, is interested in exploring biomarker technologies as assessment tools for use in FDA guidance to facilitate cancer drug development;

Whereas FDA and NCI formed an Interagency Oncology Task Force (IOTF) in 2003 that as a convening body serves as the source of the concept of this memorandum of understanding (MOU) to support collaborations on oncology-related issues including development and qualification of biomarkers and predictive tools (e.g., molecular assays and targeted therapies) for clinical benefit, and standardization of approaches for evaluating biomarkers and tools in diagnosing, staging, and assessing therapeutic response in cancer clinical trials;

Now, therefore, these three agencies agree to collaborate through working groups and steering committees to develop strategic plans, set priorities, and leverage resources and expertise from multiple sources, including the private sector, toward the goal of improving the clinical utility of biomarker technologies as diagnostic and assessment tools that facilitate the development of safer and more effective cancer therapies. This MOU sets forth the framework for collaboration among the three Parties and for pursuing specific collaborative projects that may involve additional Parties and will be implemented through separate agreements, as needed. This collaboration among FDA, NCI, and CMS shall be known as the Oncology Biomarker Qualification Initiative (OBQI). The Parties anticipate that ideas and concepts developed by the OBQI working groups and steering committees may lead to partnerships that will be implemented through separate agreements.

The Parties agree as follows:

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[1] Biological marker (biomarker) is a characteristic that is objectively measured and evaluated as an indicator of normal biological processes, pathogenic processes, or pharmacologic responses to a therapeutic intervention. Clin Pharmacol Ther 2001;69:89-95.

RESPONSIBILITIES OF THE PARTIES

In order to pursue the goals described above, the Parties agree to work through the process described below.

1. The Parties will form cross agency working groups to develop concepts for potential pursuit as a OBQI activity. These working groups shall be formed to consider approaches for the development and application of clinical assessment or biomarker technologies that enhance diagnostic or therapeutic strategies for various forms of cancer. Specific areas of scientific activities include the application of platform technologies for assessing genomic and proteomic alterations, multiplexed molecular assays, and advanced imaging modalities. Each working groups shall be responsible for developing and prioritizing concepts, preparing white papers on scientific rationale, evaluating availability technologies, addressing general concepts in experimental design, prepare protocols to evaluate biomarkers in clinical trials, and outlining approaches for assessing research progress. Moreover, the working group shall consider development of standards, nomenclature and tools to facilitate and accelerate the development of, and evidence base for, new diagnostics, assessment tools, and cancer therapeutics. As a result of this process the working groups will aim to increase the scientific knowledge base of specific biomarkers for various forms of cancer. The working groups will include representatives from each party and meet or conference monthly. The working group chairs will report to the OBQI chairs. A quarterly meeting will be held to discuss progress, develop consensus on working group activities, and foster communications and directions for facilitating the project(s).

2. Top priority projects that emerge from the working groups will be publicized as areas of interest of the OBQI with the intention of involving participation and input from private sector partners. Through this process, the government will seek to engage the private sector in the implementation of the research. Numerous implementation strategies are anticipated and available. These strategies may include the following: The federal government may perform certain research projects directly or through funding agreements. The private sector may perform projects directly or may fund the research through gifts to the government or through certain non-profit organizations, such as the Foundation for the National Institutes of Health. Consortiums of interested Parties may also be formed with different Parties responsible for different components of a project. To the extent that the federal government is involved in the implementation of projects, each agency is bound to act within its statutory authorities.[2]

3. To the extent that implementation of specific projects involves working with the non-federal sector, the Parties will, consistent with their legal authorities, facilitate dialogue with the appropriate potential collaborators or Parties of interest. Such interactions may include a range of stakeholders, such as private non-profit organizations, industry,

[2] To the extent that Federal employees are involved in the implementation of specific projects, federal employee participation will be governed by statutes, regulations and policies on interactions with outside organizations. Determinations of what is or is not permissible will be determined on a case by case basis.

industry trade organizations, academic institutions, professional organizations, and patient advocacy groups.

4. In addition to developing concepts for biomarker projects, the OBQI will develop standards, nomenclature and tools to facilitate and accelerate the development of, and the evidence base for, new diagnostics, assessment tools and anticancer drugs, and develop educational tools to make this information more widely available to patients, clinicians and researchers.

GENERAL PROVISIONS

Proprietary and/or nonpublic information will not be disclosed under this MOU, unless such disclosure is governed by appropriate confidentiality disclosure agreements, or to the extent such disclosure is permitted by law.

Any notice or other communication required or permitted under this MOU shall be in writing and will be deemed given as of the date it is received and accepted by the receiving party.

CONTACTS

Notices or formal communications pursuant to this MOU should be sent to:

For FDA: Wendy R. Sanhai, Ph.D.
Senior Scientific Advisor
Office of the Commissioner, FDA
5600 Fishers Lane HZ-1
Rockville, MD. 20857
Phone: (301) 827-7867, Fax (301) 443-9718

For NCI: Gregory J. Downing, D.O., Ph.D.
Director, Office of Technology and Industrial Relations
Office of the Director, NCI
31 Center Drive
MSC 2580 - Room 10A52
Bethesda, MD 20892
Telephone: (301) 496-1550, Fax: (301) 496-7807

For CMS: Peter Bach, M.D.
Policy Advisor, CMS
200 Independence Avenue, SW (Room 314G)
Washington, D.C., 20201
Telephone: (202) 205-5610, Fax: (202) 690-6262

TERM, TERMINATION AND MODIFICATIONS

1. This MOU constitutes the entire agreement among the Parties pertaining to the OBQI.

2. There are no representations, warranties, agreements or understandings, express or implied, written or oral between the Parties hereto relating to the subject matter of this MOU that are not fully expressed herein.
3. No supplements, amendments or modifications to this MOU shall be binding unless executed in writing, with thirty (30) days advance notice, and by mutual consent of the Parties; such modifications are to take the form of amendments.
4. This MOU, when accepted by the Parties, will have an effective date from date of the last to sign and will remain in effect for three (3) calendar years from the effective date unless modified or terminated.

Signatures begin on next page

SIGNATURES OF RESPONSIBLE PARTIES

We, the undersigned, agree to abide by the terms and conditions of this MOU.

APPROVED AND ACCEPTED FOR THE FDA

Date 1/24/06

Janet Woodcock, M.D.
Deputy Commissioner for Operations
and Chief Operating Officer (COO)
U.S. Food and Drug Administration

APPROVED AND ACCEPTED FOR THE NCI

Date 01/20/06

Anna D. Barker, Ph.D.
Deputy Director
National Cancer Institute

APPROVED AND ACCEPTED FOR THE CMS

Barry M. Straube, M.D.

Date 01/23/2006

Barry Straube, M.D.
Acting Director, Office of Clinical Standards and Quality
The Centers for Medicare and Medicaid Services

[FR Doc. 06–2656 Filed 3–17–06; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HOMELAND SECURITY

[DHS–2005–0055]

Privacy Act of 1974; System of Records

AGENCY: United States Department of Homeland Security (DHS).

ACTION: Notice of Privacy Act System of Records.

SUMMARY: This notice addresses the previously established ENFORCE/IDENT Privacy Act system of records. Among other information, ENFORCE/IDENT stores biometric data collected for national security, law enforcement and other mission-related functions of the Department of Homeland Security. The Department proposes to change the categories of individuals from whom biometric information will be obtained in order to cover two new groups: (1) Individuals who apply for any form of automated or other expedited inspection for verifying eligibility to cross the borders into the United States; and (2) individuals who are permitted access to the sterile areas of airports after undergoing screening, including an immigration check, by the Transportation Security Administration. The Department also proposes to change the system manager for this record system.

DATES: Written comments must be submitted on or before April 19, 2006.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS–2005–0055 by *one* of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: (202) 298–5201.
- Mail: Steve Yonkers, US–VISIT Privacy Officer, 245 Murray Lane, SW., Washington, DC 20538; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, US–VISIT Privacy Officer, 245 Murray Lane, SW., Washington, DC 20538, by telephone (202) 298–5200 or by facsimile (202) 298–5201.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) is publishing a revision in an existing Privacy Act system of records known as Enforcement Operational Immigration Records (ENFORCE/IDENT). The notice for this system of records was last published in the **Federal Register** on December 12, 2003 (68 FR 69414).

ENFORCE/IDENT is a system of records that existed prior to the creation of DHS. It was part of the systems of records maintained by the Immigration and Naturalization Service when that agency was part of the Department of Justice, and it transferred to DHS with enactment of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002). Although the system provides biometric identification services for many different types of enforcement operations and biometric screening programs at DHS, management of the system is now the responsibility of the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program. The title of the System Manager has been changed in this notice to reflect this responsibility.

Because ENFORCE/IDENT amounts to a legacy system, it maintains functionality beyond the collection of biometric information and many of the categories of records already in the system pertain to law enforcement operations generally. The changes being proposed today, however, are prompted by the proposed collection of biometric data from additional populations. In particular, DHS proposes to add two categories of individuals from whom biometric information will be obtained: (1) Individuals who apply for any form of automated or other expedited inspection for verifying eligibility to cross the borders into the United States; and (2) individuals who are permitted access to the sterile areas of airports and seaports after undergoing screening by the Transportation Security Administration. The screening includes a check of immigration databases for which biometrics will be collected and stored in the IDENT record system.

Addition of the first category is based on the fact that DHS has proposed a consolidation of existing frequent traveler programs to expedite the processing of pre-approved, international, low-risk travelers effectively and efficiently through the border. Participation in the trusted traveler programs is completely voluntary, and the applicants agree to provide personal biographical and biometric data for the purposes of conducting law enforcement based background checks and criminal history checks to determine their "low-risk" status. The biometrics will be stored in ENFORCE/IDENT and will be used to conduct biometric based watchlist checks and to verify identity through biometric matching of an individual against the biometrics submitted by the individual at a prior encounter.

Addition of the second category of individuals is based on the fact that the ENFORCE/IDENT database will maintain biometrics collected by the Transportation Security Administration, which is conducting immigration status checks for individuals who have unescorted access to the sterile areas of airports and seaports.

In addition to the biometrics collected for these two initiatives, ENFORCE/IDENT will maintain sufficient biographic information to facilitate the identification of the biometric information, and encounter data.

The revisions in this record system will result in additions to the categories of individuals covered by the system, but otherwise there should be no significant change in the system operation. Over time, however, DHS may change the architecture of the ENFORCE/IDENT to more closely align it with operational requirements. Such changes will be documented in privacy impact assessments and in further revisions, as necessary, to this system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system change to the Office of Management and Budget and to Congress.

DHS/ICE–CBP–CIS–001–03

SYSTEM NAME:

Enforcement Operational Immigration Records (ENFORCE/IDENT).

SYSTEM LOCATIONS:

Department of Homeland Security (DHS) field offices for the Bureau of Immigration and Customs Enforcement (ICE), Bureau of Customs and Border Protection (CBP), and the United States Citizenship and Immigration Services (USCIS); Service Centers; Border Patrol Sectors (including all offices under their jurisdiction); Ports of Entry; and Asylum offices and other offices as published in the **Federal Register** on October 17, 2002 (67 FR 64136) and on the Web page of each bureau (*i.e., http://www.ice.gov, http://www.cbp.gov,* and *http://www.uscis.gov*); Transportation Security Administration, 601 S. 12th Street, Arlington, VA 22202–4220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this consist of:

A. Individuals or entities who relate in any manner to investigations, inspections, apprehensions, detentions, patrols, removals, examinations, naturalizations, intelligence production, legal proceedings or other operations that implement and enforce the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) and related treaties, statutes, orders and regulations. Individuals who are respondents, representatives, or witnesses in administrative, civil penalty, or forfeiture proceedings, or defendants, representatives or witnesses in criminal prosecution or extradition proceedings.

B. Individuals who are obligors or representatives of obligors of bonds posted.

C. Individuals in distress who are located during search and rescue operations, and other immigration operations.

D. Individuals wanted by other law enforcement agencies, including Federal, state, local, tribal, foreign and international or individuals who are the subject of inquiries, lookouts, or notices by another agency or a foreign government.

E. Individuals who apply for immigration benefits and/or any form of automated or other expedited inspection for verifying eligibility to cross the borders into the United States.

F. Non-United States citizens and Non-Lawful Permanent Residents who present themselves for entry into and/or exit from the United States, including individuals subject to the requirements and processes of US–VISIT. Individuals covered under US–VISIT include those who are not United States citizens or Lawful Permanent Residents at the time of entry or exit or who are United States citizens or Lawful Permanent Residents who have not identified themselves as such at the time of entry or exit.

G. Nationals of countries that threaten to wage war, or are or were at war with the United States, and individuals required to register as agents of foreign governments in the United States.

H. Individuals who are subject to security screening by the Transportation Security Administration, which includes a check of immigration databases, in order to have access to the sterile areas of an airport or seaport.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system come directly from information collected from individuals during a DHS enforcement encounter or biometric identification/screening. Records collected from enforcement encounters generally include biographical data, including but not limited to name, aliases, date of birth, phone numbers, addresses, nationality; personal descriptive data; biometric identifiers, including but not limited to fingerprints and photographs; any materials, information or data related to the subject individual's case, including but not limited to immigration history, alien registration and other identification or record numbers. Records collected from admission screening generally consist of biographic data, biometric data, and encounter data, including time, place, location, and travel document information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103; 8 U.S.C. 1225(d)(3); 8 U.S.C. 1324(b)(3); 8 U.S.C. 1357(a); and 8 U.S.C. 1360(b).

PURPOSE(S):

This system of records is established and maintained to enable DHS to carry out its assigned national security, law enforcement, immigration control, and other mission-related functions and to provide associated management reporting, planning and analysis. Specifically, this system of records assists in identifying, investigating, apprehending, and/or removing aliens unlawfully entering or present in the United States; preventing the entry of inadmissible aliens into the United States; facilitating the legal entry of individuals into the United States; recording the departure of individuals leaving the United States; maintaining immigration control; preventing aliens from obtaining benefits to which they are not entitled; analyzing information gathered for the purpose of this and other DHS programs; or identifying, investigating, apprehending and prosecuting, or imposing sanctions, fines or civil penalties against individuals or entities who are in violation of INA, or other governing orders, treaties or regulations and assisting other Federal agencies to protect national security and carry out other Federal missions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the appropriate agency/organization/task force, regardless of whether it is Federal, state, local, foreign, or tribal, charged with the enforcement (*e.g.*, investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

B. To other Federal, state, tribal, and local government law enforcement and regulatory agencies and foreign governments, and individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the immigration and nationality laws, to elicit information required by DHS to carry out its functions and statutory mandates.

C. To an appropriate Federal, state, local, tribal, international government agency in response to its request, in connection with the hiring or retention by such an agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

D. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or discovery proceedings.

E. To a Federal, state, tribal or local government agency to assist such agencies in collecting the repayment or recovery of loans, benefits, grants, fines, bonds, civil penalties, judgments or other debts owed to them or to the United States Government, and/or to obtain information that may assist DHS in collecting debts owed to the United States government.

F. To the news media and the public when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of the Department's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

H. To the National Archives and Records Administration or other Federal

government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

I. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

J. To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information can be stored in case file folders, cabinets, safes, or a variety of electronic or computer databases and storage media.

RETRIEVABILITY:

Records may be retrieved by name; biometrics; identification numbers (including but not limited to alien number, fingerprint identification number, etc.); case related data and/or combination of other personal identifiers such as date of birth, nationality, etc.

SAFEGUARDS:

The system is protected through multi-layer security mechanisms. The protective strategies are physical, technical, administrative and environmental in nature and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

The following proposal for retention and disposal is pending approval with National Archives and Records Administration (NARA):

Records that are stored in an individual's file will be purged according to the retention and disposition guidelines that relate to the individual's file (DHS/ICE/USCIS001A). Electronic records for which the statute of limitations has expired for all criminal violations and that are older than 75 years will be purged. Fingerprint cards, created for the purpose of entering records in the database, will be destroyed after data entry. The I–877, and copies of supporting documentation, which are created for the purpose of special alien registration back-up procedures, will be destroyed after data entry. Work Measurement Reports and Statistical Reports will be maintained within the guidelines set forth in NCI–95–78–5/2 and NCI–85–78–1/2 respectively.

SYSTEM MANAGER AND ADDRESS:

Program Manager, IDENT Program Management Office, US–VISIT Program, U.S. Department of Homeland Security, Washington, DC 20528, USA.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the US–VISIT Privacy Officer, US–VISIT Program, Border and Transportation Security, U.S. Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20528, USA.

RECORD ACCESS PROCEDURE:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to the granting or denial of access shall be made at the time a request is received. Requests for access to records in this system must be in writing, and should be addressed to the System Manager noted above or to the appropriate FOIA/PA Officer. Such request may be submitted either by mail or in person. The envelope and letter shall be clearly marked "Privacy Access Request." To identify a record, the record subject should provide his or her full name, date and place of birth; if appropriate, the date and place of entry into or departure from the United States; verification of identity (in accordance with 8 CFR 103.21(b) and/or pursuant to 28 U.S.C. 1746, make a dated statement under penalty of perjury as a substitute for notarization), and any other identifying information that may be of assistance in locating the record. He or she shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the granting or denial of a request shall be made at the time a request is received. An individual desiring to request amendment of records maintained in this system should direct his or her request to the System Manager of the appropriate office that maintains the record or (if unknown) to the appropriate FOIA/PA Officer at each bureau. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is supplied by individuals covered by this system, and other Federal, state, local, tribal, or foreign governments; private citizens, public and private organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4), (d), (e) (1), (2), and (3), (e)(4)(G) and (H), (e) (5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: March 10, 2006.

Maureen Cooney,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E6–3951 Filed 3–17–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Renewal From OMB of One Current Public Collection of Information: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by May 19, 2006.

ADDRESSES: Comments may be mailed or addressed to Katrina Wawer, Attorney-Advisor, Office of Chief Counsel, TSA–02, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address, by telephone (571) 227–1995 or facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0013; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey. TSA, with OMB's approval, has collected data via the following instruments and now seeks approval to continue this effort:

(1) *Statistically Valid Intercept Surveys.* Between 2003 and 2005, TSA conducted two statistically valid passenger surveys at airports nationwide. The surveys were administered using an intercept methodology, in which passengers were handed survey forms soon after they experienced TSA's aviation security functions and were invited to mail the forms back. Passengers who received surveys were selected randomly, such that the sample of passengers that received surveys at each airport over the survey period was representative of all passenger demographics-including passengers who—

- Traveled on weekdays or weekends;
- Those who traveled in the morning, mid-day, or evening;
- Those who passed through each of the different security screening locations in the airport;
- Those who were subject to more intensive screening of their baggage or person; and
- Those who experienced different volume conditions and wait times as they proceeded through the security checkpoint.

The surveys were also representative of passenger identity factors, such as gender, frequency of travel, and purpose of the trip as business or leisure.

Participation by passengers was voluntary. TSA Headquarters supplied independent administrators to each site to distribute the survey forms. The administrators were not TSA employees and handled the forms and data independently of TSA in an effort to (1) ensure the validity of the results, and (2) allow quality assurance and monitoring from TSA Headquarters. The form included approximately 10 questions about aspects of the passenger experience, including approximately three demographic questions.

Dates, times, and screening locations were chosen within each airport in order to provide a statistically valid representation of customer satisfaction over the survey period. Airports were chosen to represent the experience of most passengers and included major airports, as well as a few smaller ones to gain a more complete picture of the traveling public. TSA intends to continue to conduct up to two surveys annually, each with a target of 500 returned forms at 25–35 major airports. TSA estimates an annual total of 35,000 respondents (1 survey per airport x 70 airports x 500 returned forms per survey) and, based on an estimate of a five-minute burden per respondent, a maximum total annual burden system-wide of 2,500 hours. There is no burden on passengers who choose not to respond. Respondents will not incur any financial burden as TSA will pay the postage for the surveys.

(2) *Focus Groups.* TSA conducted 12 focus groups in fall 2002 and 12 in fall 2003 to aid in the design of the Customer Satisfaction Index survey referenced above. The purpose of the focus groups was to understand the factors better that contribute to customer satisfaction and public confidence. TSA proposes to conduct an additional 12 focus groups during fall 2006 and, thereafter, an additional 12 annually to ensure that the current survey questions are still effective in measuring the drivers of customer satisfaction, particularly in light of new TSA initiatives. Non-TSA, professional, and independent facilitators will moderate the focus group sessions to (1) ensure the validity of the results, and (2) allow for quality assurance and monitoring from TSA Headquarters. The selection of participants in the focus groups will be intentionally diverse with respect to age, gender, etc. Each session will last 60–90 minutes. The total time burden for all participants combined will be approximately 216 hours (1.5 hours x 12 participants x 12 focus groups). As with previous focus groups, TSA will use the results of the focus groups to identify factors affecting the public's satisfaction and confidence.

(3) *Informal Surveys Conducted by Airport Staff.* Finally, TSA seeks approval to continue conducting informal surveys at individual airports to collect performance data for improved customer service. Airport staff used these informal surveys most often to test passenger response to service improvements implemented in response to identified service problems. The results were used to enable localized service improvements at each airport. Participation by passengers was voluntary. TSA Headquarters will continue to provide a list of approximately 25 approved questions, from which airports can select a subset, and a Headquarters-designed and -approved template for the survey form.

Surveys will be conducted at the discretion of the TSA airport staff, subject to a limit (as imposed by TSA Headquarters and pending approval of the Office of Management and Budget) of a five-minute burden per respondent and an aggregate burden of 100 hours per airport per year. Assuming that all 446 airports employ this process, the aggregate system-wide burden will not exceed 44,600 hours per year. There is no burden on passengers who choose not to respond.

Issued in Arlington, Virginia, on March 14, 2006.

Lisa S. Dean,

Privacy Officer.

[FR Doc. E6–3954 Filed 3–17–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. UnitedHealth Group Incorporated & PacifiCare Health Systems, Inc.; Propoosed Final Judgment and Competitive Impact Statement

Notice is hereby given, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Amended Final Judgment, and Competitive Impact Statement were filed with the United States District Court for the District of Columbia in *United States* v. *UnitedHealth Group Incorporated & PacifiCare Health Systems, Inc.*, Civ. Action No. 1:05CV02436. On December 20, 2005, the United States filed a Complaint alleging that United's acquisition of PacifiCare would violate Section 7 of the Clayton Act, 15 U.S.C. 18. A proposed Final Judgment, filed on the same day, requires United to divest certain health insurance contracts in Tucson, Arizona and Boulder, Colorado. It also enjoins United from continuing to exchange certain information with CareTrust Networks, a wholly owned subsidiary of Blue Shield of California and requires United to terminate its network rental agreement with CareTrust effective one year after entry of the Final Judgment. On March 2, 2006, an Amended Final Judgment was filed to permit United to add new members to the CareTrust network until July 5, 2006. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Amended Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (telephone: 202–514–2481), on the Internet at *http://www.usdoj.gov/atr*, and at the Clerk's Office of the United States District Court for the District of Columbia. Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: 202–307–0001).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

Case Number 1:05CV02436
Judge: Ricardo M. Urbina
Deck Type: Antitrust
Date Stamp: 12/20/2005

United States of America, 1401 H Street, NW., Suite 4000, Washington, DC 20036, Plaintiff, v. UnitedHealth Group Incorporated, 9900 Bren Road East, Minnetonka, MN 55343, PacifiCare Health Systems, Inc., 5995 Plaza Drive, Cypress, CA 90630, Defendants

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin defendant UnitedHealth Group Incorporated ("United") from acquiring certain health insurance-related assets of its competitor, defendant PacifiCare Health Systems, Inc. ("PacifiCare"), in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

1. United is one of the nation's largest health insurers, providing health and wellness insurance and other services to more than 55 million people nationwide. PacifiCare has approximately 13 million health insurance members in Arizona, California, Colorado, Nevada, Oklahoma, Oregon, Texas, and Washington.

2. United and PacifiCare offer a variety of commercial health insurance products, such as health maintenance organizations ("HMOs") and preferred provider organizations ("PPOs").

3. Small businesses, to help recruit and retain good workers, seek to offer health insurance benefits for their employees by sponsoring a commercial health insurance plan. Health insurance benefits are frequently one of the largest costs facing small businesses, who are thus very price sensitive in purchasing health insurance. Small businesses rely upon vigorous competition among commercial health insurers to keep prices affordable. Small businesses' options for providing health care benefits are often more limited than those available to other employers; in many markets, there are commercial health insurers selling health plans to larger employers that do not sell to small-group employers.

4. United and PacifiCare compete against one another in the sale of commercial health insurance plans to small-group employers in the Tucson, Arizona Metropolitan Statistical Area ("MSA"), where the sales of health insurance plans to all small-group employers is estimated to exceed $250 million. United's acquisition of PacifiCare will eliminate direct competition between them, and may permit United to increase prices and reduce the quality of commercial health insurance plans to small-group employers in Tucson.

5. In addition, United and PacifiCare purchase health care services from physicians and other providers for their employer members. United's acquisition of PacifiCare will eliminate direct competition between them in the purchase of physician services in Tucson, Arizona, and Boulder, Colorado, will consolidate their purchasing power, and may permit United to acquire physician services at lower rates. Such lower rates would likely to lead to a reduction in the quantity or a degradation in the quality of physician services provided to patients in those areas. Total annual expenditures for physician services is estimated to exceed $1.5 billion in the Tucson MSA and $375 million in the Boulder MSA.

6. In addition, PacifiCare competes directly with Blue Shied of California, both for the purchase of health care provider services and for the sale of commercial health insurance in the State of California. United rents the provider networks of CareTrust Networks, a wholly-owned subsidiary of Blue Shield of California. Under a network access agreement, United has access to certain information about the CareTrust networks and a power to confer with Blue Shield about United's product development to the extent it affects the CareTrust networks. As a result of this merger, United will compete directly with Blue Shield. The continuation of the United/CareTrust network access agreement in its current form after the merger may substantially reduce competition in the markets for the purchase of health care provider services and for sale of commercial health insurance in one or more MSAs in California. In these markets, billions of dollars are spent annually on both the purchase of commercial health insurance, and the provision of health care providers services for members of health care benefit plans.

I. Jurisdiction and Venue

7. The United States files this Complaint pursuant to Sections 15 and 16 of the Clayton Act, as amended, 15 U.S.C. 25 and 26, to prevent and restrain

the defendants' violation of section 7 of the Clayton, as amended, 15 U.S.C. 18.

8. United and PacifiCare are engaged in interstate commerce, and their activities substantially affect interstate commerce.

The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331 and 1337(a).

10. Venue is proper in this District under 15 U.S.C. 22 and 28 U.S.C. 1391(c), in that each of the defendants is a corporation that transacts business and is found in the District of Columbia.

II. The Defendants

11. United is a corporation organized under the laws of Minnesota, and has its principal place of business in Minnetonka, Minnesota. United is one of the country's leading commercial health insurers, offering a variety of HMO, PPO, Point-of-Service ("POS"), Self-Directed Health Plans ("SDHP"), and other products. United contracts with over 460,000 physicians and other health care professionals, and 4,200 hospitals, nationwide. United reported in excess of $37 billion in revenues of 2004.

12. PacifiCare is a corporation organized under Delaware law. Its primary place of business is Cypress, California. PacifiCare offers group health insurance products, such as HMOs, PPOs, Exclusive Provider Organizations ("EPOs"), SDHP, and Medicare HMOs under the Secure Horizons name, throughout the United States, PacifiCare reported $12.2 billion in revenues for 2004.

III. United Proposes to Merge with PacifiCare

13. United entered into an Agreement and Plan of Merger (the "Transaction") with PacifiCare dated July 6, 2005.

14. The Transaction provides that PacifiCare shall merger into United. PacifiCare shareholders will receive 1.1 shares of United stock, and $21.50 cash, for each PacifiCare share owned. The acquisition price is $8.15 billion, based on closing share prices for the day of the Transaction.

IV. Violations Alleged

Count 1: Anti-Competitive Effects in the Sale of Commercial Health Insurance to Small-Group Employers in Tucson, Arizona

15. Plaintiff incorporated herein paragraphs 1–14.

A. Relevant Product Market

16. The relevant price market affected by the proposed Transaction is the sale of commercial health insurance to small-group employers. Commercial health insurers, brokers who assist employers in purchasing health plans, and state insurance commissions view the market for the sale of commercial health to small-group employers as distinct from the large-group employer market. Commercial health insurers, such as United and PacifiCare, employ staff dedicated to marketing and sales of commercial health insurance plans to small-group employers, and develop and implement separate strategic plans directed to such sales. Brokers frequently specialize in working with small-group employers. Many state insurance commissions, including Arizona's, have regulations applying exclusively to the sale of commercial health insurance to small employers. Arizona defines small employers as those having between 2–50 employees. Arizona regulations, for example, require that commercial health insurers selling to small employers guarantee basic group health insurance coverage. Arizona also limits the variance among premium rates that a commercial health insurer can charge to its small employer customers.

17. For some employers, an effective alternative to purchasing commercial health insurance is self-funding. An employer self-funds its health benefits when is assumes responsibility for paying the covered health care expenses incurred by employees or their families, minus any co-payment or co-insurance payment an employee may pay for a given health care service.

Employers that self-fund their health benefit plans frequently retain a company to provide administrative services for the plan (known as "administrative services only" or "ASO"). Many commercial health insurance companies also sell ASO to self-funded employers.

18. Because most small employers do not have a sufficient employee population across which they can spread the financial risk, and do not have multiple locations to obtain geographic diversity for risk reduction, self-funding is not a viable option for them.

19. Smaller employers are substantially less likely to have dedicated benefit administrators. Smaller employers place principal reliance upon brokers to assist in various aspects of their sponsorship of a health benefit plan, such as plan design consultation, and assistance with the bidding process.

20. Commercial health insurance contracts typically renew annually. Small employers, through their brokers, will solicit competing bids from various commercial insurers. Bidding occurs on an employer-by-employer basis, with commercial health insurers able to conform their bids to the characteristics of the employer and its employee population. Because self-funding is not a viable option for most small employers, they have a substantial stake in competition among commercial health insurers to produce the best available plan at the most affordable price.

21. An insufficient number of small-group employers would drop sponsorship of commercial health insurance plans to make a small but significant price increase to all small-group employers unprofitable. Sale of commercial health insurance to small-group employers is a relevant product market, and a line of commerce under section 7 of the Clayton Act.

B. Relevant Geographic Market

22. Health care primarily occurs on an in-person basis. Employees seek relationships with physicians and other health care professionals and institutions that are located in the metropolitan area in which they live and work.

23. Commercial health insurers and brokers consider the area in and around Tucson, Arizona, to be a separate and distinct area for the sale of health plans to small-group employers.

24. The United States Department of Commerce has defined the area in and around Tucson, Arizona as a MSA. The Tucson MSA is comprised of Pima County.

25. An insufficient number of small-group employers would purchase commercial health insurance outside the Tucson MSA to make a small but significant price increase to all small-group employers in Tucson unprofitable. The Tucson MSA is a relevant geographic market, and a section of the country under Section 7 of the Clayton Act.

C. Effects of the Proposed Transaction

26. United and PacifiCare are among the principal competitors in the market for the sale of commercial health insurance to small-group employers in Tucson, and they are among each other's principal competitors. Besides United and PacifiCare, there are few other substantial competitors. Many small-group employers have only one, or in some cases two, additional competitive options.

27. United and PacifiCare are the second and third largest sellers of commercial health insurance to small-group employers in Tucson. United

currently has an approximate 16% share of the small-group employer commercial health insurance lives in Tucson; PacifiCare's market share is approximately 17%. If the proposed Transaction were consummated, United would have an approximate 33% share, roughly equal to the market share of the largest commercial health insurer in Tucson. The market for the sale of commercial health insurance to small-group employers in Tucson is highly concentrated. If the proposed Transaction were consummated, the Herfindahl-Hirschman Index ("HHI"), which is commonly employed in merger analysis and is defined and explained in *Appendix A* to this Complaint, would be greater than 2,500, and the change in the HHI resulting from the proposed Transaction would be in excess of 500.

28. The market shares of other competitors are substantially smaller than the shares of the top three firms. United and PacifiCare are consistently competitive bidders to retain and obtain small-group employer business.

29. PacifiCare is a particularly aggressive, low-price competitor in the small-group employer market in Tucson. These are important qualities to small-group employers, who are sensitive to price and particularly reliant on competition to keep health benefit plans affordable. Absent the proposed Transaction, PacifiCare would likely take small-group employer business away from United and other competitors in Tucson.

30. In Tucson, small-group employers and their employees benefit from competition between United and PacifiCare, through better products and lower prices. The proposed Transaction will eliminate this competition, and may permit United to increase price and reduce quality of commercial health insurance plans to small-group employers in Tucson. The effect of the proposed Transaction may be substantially to lessen competition in violation of Section 7 of the Clayton Act.

Count 2: Anti-Competitive Effects in the Purchase of Physician Services in Tucson, Arizona, and Boulder, Colorado

31. Plaintiff incorporates herein Paragraphs 1–14.

32. One component of a commercial health insurance product is its provider networks. Commercial health insurers contract with an array of health care professionals and facilities in the various locations in which they sell insurance products to form provider networks. Physicians offer discounts from their usual fee schedule in order to obtain access to a commercial health insurer's substantial volume of members in need of health care services.

A. Relevant Product Market

33. There are no purchasers to whom physicians can sell their services other than individual patients or the commercial and governmental health insurers that purchase physician services on behalf of their patients. A small but significant decrease in the price paid to physicians would not cause physicians to seek other purchasers of their services or to otherwise change their activities (away from providing physician services) in numbers sufficient to make such a price reduction unprofitable. Thus, the purchase of physician services is a relevant product market, and a line of commerce under Section 7 of the Clayton Act.

B. Relevant Geographic Markets

34. The patient preferences that result in localized geographic markets for the sale of commercial health insurance also produce local markets for the purchase of physician services. Physicians expend considerable efforts to build a practice in a particular geographic area. A physician cultivates relationships with patients, and gains referrals in large part through a favorable reputation among peer physicians and others in the community. These assets, which a physician compiles over time, are not easily transportable.

35. The number of physicians who would sell their services outside Boulder and Tucson, respectively (by relocation, attracting patients from outside the physician's home MSA, or otherwise), would not be sufficient to make a small but significant price decrease to all physicians in those MSAs unprofitable. Similarly, a reduction in the quantity or quality of physician services resulting from the price decrease would not prompt a sufficient number of patients to obtain physician services outside those areas to overcome such a price decrease. Thus, the Boulder MSA and Tucson MSA are relevant geographic markets, and sections of the country under Section 7 of the Clayton Act.

C. Effects of the Proposed Transaction

36. The contract rates and other terms that a physician can obtain from a commercial health insurer depend on the physician's ability to terminate (or credibly threaten to terminate) the relationship if the insurer demands lower rates or other disfavored contract terms. A physician's ability to terminate a relationship with a commercial health insurer depends on his or her ability to replace the amount of business lost from the termination, and the time it would take to do so. Failing to replace lost business expeditiously is costly.

37. Physicians have a limited ability to maintain the business of patients enrolled in a health plan once the physician terminates. Physicians could retain patients by encouraging them to switch to another health plan in which the physician participates. This is particularly difficult for patients employed by companies that sponsor only one plan because the patient would need to persuade the employer to sponsor an additional plan with the desired physician in the plan's network. Alternatively, the patient may remain in the plan, visiting the physician on an out-of-network basis. The patient would be faced with the prospect of higher out-of-pocket costs, either in the form of increased co-payments for use of an out-of-network physician, or by absorbing the full cost of the physician care.

38. The difficulty of timely replacing the business lost from terminating a plan increases as the plan's share of the physician's total practice increases. The difficulty is even greater where the insurer accounts for a large share of all physicians' business in a given locality because of the effect on referrals from other physicians.

39. In Tucson, the combined membership of United and PacifiCare would comprise a significant percentage of physician revenues. PacifiCare's membership in Tucson includes substantial commercial health insurance members and managed care Medicare enrollees, which are marketed under the name Secured Horizons. Many physicians and physician groups derive a substantial percentage of their revenue from PacifiCare's managed care Medicare plans.

40. In Boulder, PacifiCare's membership consists of a small number of very large accounts, the largest of which is its contract with the University of Colorado for the provision of commercial HMO coverage to approximately 6,000 members residing in the Boulder area (the "Boulder Contract"). The Boulder Contract alone constitutes nearly half of PacifiCare's entire commercial health insurance membership in Boulder. Thus, PacifiCare's strong bargaining position in physician negotiations results largely from the members it derives from the Boulder Contract.

41. As a result of the proposed Transaction, United will account for a large share of total payments to all physicians in the Boulder and Tucson areas, and a particularly large share of revenue, in excess of 35% in the Tucson

MSA and in excess of 30% in the Boulder MSA, for a substantial number of physicians in those areas. These revenue shares understate the importance to physicians of payments from commercial health insurance plans. The total payments made to physicians include revenue earned by treating patients covered by Medicare and Medicaid, which account for a substantial amount of revenue for many physicians. Physicians typically consider commercial health insurance business more profitable than Medicare and Medicaid business. Many physicians use their commercial health insurance business to compensate for the lower revenue earned from Medicare and Medicaid business.

42. The markets for the purchase of physician services in the Tucson and Boulder MSAs are highly concentrated. If the proposed Transaction were consummated, the HHI would exceed 1,800 for Tucson and Boulder, and the change in HHI resulting from the proposed Transaction would exceed 700 for Tucson and 400 for Boulder.

43. The proposed Transaction may enable United to pay lower rates for physician services in Tucson and Boulder, which would likely lead to a reduction in quantity or degradation in quality of physician services provided to patients in these areas. Thus, the effect of the Transaction may be substantially to lessen competition in violation of Section 7 of the Clayton Act.

Count 3: Anti-Competitive Effects in the State of California

44. Plaintiff incorporates herein paragraphs 1–14.

45. United Currently does not actively sell commercial health insurance in California. Its California membership consists of employees of large, national or regional employers that self-fund their health benefit plans and use United for ASO.

46. To serve its California-based commercial members, United does not contract with health care providers directly. Since July 2000, United has rented the provider networks of CareTrust Networks. Blue Shield of California, which owns CareTrust Networks, is one of the largest commercial health insurers in California, with substantial membership throughout the State. In exchange for access to the CareTrust provider networks, which permits United to remain a competitive option for large self-funded employers with California-based employees, United pays a substantial fee to Blue Shield.

47. Pursuant to the network access agreement between United and CareTrust, United has access to certain information about the CareTrust provider network. The two hold regular meetings to review provider contract negotiations and terminations, reimbursement and claims processing issues, and network development. Through these meetings, United has gained access to information about the discounts that CareTrust has negotiated with physicians, hospitals, and other health care providers throughout California. On occasion, United has also disclosed to CareTrust its plans to introduce new commercial health insurance products in California to ensure that those new products would not breach the terms of any CareTrust network provider contract.

48. PacifiCare is one of the largest health insurers in the State of California, with substantial membership in its commercial and Secure Horizons products throughout the State.

A. Relevant Product Markets

49. PacifiCare competes with Blue Shield of California to sell commercial health insurance to groups of all sizes. The sale of commercial health insurance comprises one or more relevant product markets and lines of commerce under Section 7 of the Clayton Act.

50. Similarly, PacifiCare competes with Blue Shield of California to acquire health care provider services. The purchase of health care provider services, such as physician and hospital services, comprises one or more relevant product markets, and lines of commerce under Section 7 of the Clayton Act.

B. Relevant Geographic Markets

51. PacifiCare and Blue Shield of California compete in several MSAs throughout the State of California both to sell commercial insurance and to purchase physician and hospital services. Thus, various MSAs within the State of California are relevant geographic markets, and sections of the country under Section 7 of the Clayton Act.

C. Effects of the Proposed Transaction

52. PacifiCare and Blue Shield of California are among each other's principal competitors for the sale of commercial health insurance, and for the purchase of physician and hospital services. In several areas, PacifiCare and Blue Shield account for a substantial percentage of the commercial health insurance business.

53. Under the proposed Transaction, United will acquire PacifiCare's California membership, and thereby become one of Blue Shield's principal competitors for the sale of commercial health insurance and the purchase of provider services. The CareTrust alliance requires that United and Blue Shield exchange information about provider discounts and United's new products. The alliance also creates opportunities and incentives for United and Blue Shield to coordinate their competitive activities and for each to discipline the other by, among other things, terminating the network access agreement in response to competitive actions. The proposed Transaction, in light of the CareTrust alliance, may reduce competition between United and Blue Shield following the merger. Thus, the effect of the Transaction may be substantially to lessen competition for the sale of commercial health insurance and the purchase of provider services in California in violation of Section 7 of the Clayton Act.

V. Prayer for Relief

54. To remedy the violations of Section 7 of the Clayton Act alleged herein, the United States requests that the Court:

(a) Adjudge the proposed Transaction to violate Clayton Act Section 7, as amended, 15 U.S.C. 18;

(b) permanently enjoin and restrain defendants from consummating the proposed Transaction, or from entering into or carrying out any agreement, understanding, or endeavor, the purpose of which would be to combine the health insurance businesses or assets of United and PacifiCare; and

(c) award to plaintiff its costs of this action and such other and further relief as may be appropriate and as the Court may deem equitable, just, and proper.

Dated: December 20, 2005.

For Plaintiff United States of America:

Thomas O. Barnett,

Acting Assistant Attorney General, Antitrust Division.

J. Bruce McDonald,

Deputy Assistant Attorney General, Antitrust Division.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

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Jon B. Jacobs (D.C. Bar #412249), Steven Brodsky, Richard S. Martin, Paul J. Torzilli, Nicole S. Gordon.

Litigation I Section, Antitrust Division, United States Department of Justice,

City Center Building, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (p) 202–514–8349, (f) 202–307–5802.

APPENDIX A—Herfindahl-Hirschman Index

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each share of each firm, competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). (**Note:** Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

Filed: March 2, 2006.

Amended Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on December 19, 2005, plaintiff and defendants, defendant UnitedHealth Group Incorporated and defendant PacifiCare Health Systems, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain Divestiture of certain rights or assets by defendants, and their adherence to certain injunctions, to ensure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain Divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the Divestitures required by this Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the Divestiture or injunctive provisions contained herein;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Boulder" means the Metropolitan Statistical Area comprising Boulder County, Colorado.

B. "Boulder Contract" means that portion of PacifiCare's current contract with the Regents of the University of Colorado, effective January 1, 2004, which covers the commercial HMO insurance of approximately six thousand and sixty-six (6,066) members as of June 30, 2005 resident in Boulder.

C. "Commercial Health Insurance Products" means United or PacifiCare products for comprehensive commercial health coverage (whether Administrative Services Only ("ASO") or fully insured) including, but not limited to: (1) Health Maintenance Organization ("HMO") group products; (2) Preferred Provider Organization ("PPO") group products; (3) Point-of-Service ("POS") group products; (4) indemnity insurance group products; and (5) Exclusive Provider Organization ("EPO") group products, but does not include Medicare Health Insurance Products.

D. "CTN" means CareTrust Networks, formerly known as California Physicians' Service Agency, Inc. ("CPSA"), a California business corporation that operates the CTN network in California, its successors and assigns, and its parent, subsidiaries, divisions, groups, affiliates, partnerships, and their respective directors, officers, managers, agents, and employees.

E. "Divestiture," "Divest" or "Divesting" means the sale, transfer, ceding, assignment or disposition of the beneficial interest in a contract or policy for health care coverage included in the Divestiture Assets by commercially reasonable means in accordance with applicable law.

F. "Divestiture Assets" means the Tucson Commercial Insurance Contracts and the Boulder Contract, and may also include copies of all relevant contracts, business records, data and information that specifically relate to the Divestiture Assets, but excluding defendants' proprietary assets and know-how used for general application in defendants' businesses.

G. "Legacy United Customers" means existing or new customers that have, prior to the closing of the Transaction, committed to purchase or been issued a quote for health care services from United using the CTN network in California.

H. "Transition United Customers" means any customers that have, after the closing of the Transaction, received a quote for health care services from United under a policy that has an effective date of July 5, 2006 or earlier. Such customers and their members may access the CTN network until no later than July 5, 2006.

1. "Medicare Health Insurance Product" means any plan, whether HMO, PPO, fee-for-service or other, providing managed care Medicare coverage under any of the following: Medicare Part B, Medicare Advantage, Medicare Cost Plans, or the Programs of All inclusive Care (PACE).

J. "PacifiCare" means defendant PacifiCare Health Systems, Inc., a Delaware corporation with its headquarters in Cypress, California, in successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

K. "Purchaser" or "Purchasers" means the entity or entities to whom the Divestiture Assets are Divested.

L. "Transaction" means the merger contemplated by the Agreement and Plan of Merger dated July 6, 2005, by and among United, Point Acquisition LLC and PacifiCare.

M. "Tucson" means the Metropolitan Statistical Area consisting of Pima County, Arizona.

N. "Tucson Commercial Insurance Contracts" means contracts or policies identified by United for the provision of any Commercial Health Insurance Products covering at least fifty-four thousand five hundred and seventeen (54,514) members who reside or work in Tucson, representing the total number of residents commercially insured members in Tucson that PacifiCare reported as of June 30, 2005. Such contracts include contracts identified by

United covering at least 7,581 members that obtain health coverage under United or PacifiCare contracts for Commercial Health Insurance Products with small group employers (2–50 employees) situated in Tucson ("Tucson Small Group Employers"), such 7,581 members representing the total number of resident Tucson Small Group Employer members that PacifiCare reported as of June 30, 2005. Such contracts may otherwise include contracts identified by United for any Commercial Health Insurance Products entered into by PacifiCare or United.

O. "United" means defendant UnitedHealth Group Incorporated, a Minnesota corporation with its headquarters in Minnetonka, Minnesota, its successors and assigns, and its subsidiaries, divisions, group, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Pacificare and United, as defined above, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include either the Divestiture Assets or any rights under United's network access agreement with CareTrust Networks, that the acquirer agrees to be bound by the provisions of this Final Judgment. Defendants however, need not obtain such an agreement from any Purchaser of the Divested Assets.

IV. Divestitures

A. Defendants are hereby ordered and directed to Divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Purchasers acceptable to the United States, in its sole discretion, within: (i) one hundred and twenty (120) calendar days after the date on which the Transaction closes; or (ii) within five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. If approval or consent from any government unit is necessary with respect to Divestiture of the Divestiture Assets by defendants or the Divestiture Trustee, and if applications or requests for approval or consent have been filed with the appropriate governmental unit within one hundred and twenty (120) calendar days after the date on which the Transaction closes, but an order or other dispositive action on such applications has not been issued before the end of the period permitted for Divestiture, the period shall be extended with respect to Divestiture of those Divestiture Assets for which governmental approval or consent has not been issued until five (5) business days after such approval or consent is received.

B. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty-five (65) days total and shall notify the Court in such circumstances. Defendants agree to use their best efforts to Divest the Divestiture Assets as expeditiously as possible.

C. In accomplishing the Divestitures ordered by this Final Judgment, defendants promptly shall make know, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the Divestiture is being made pursuant to this Final Judgment and shall provide such person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Purchasers, subject to reasonable confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except information and documents subject to the attorney-client privilege or the attorney work-product privilege. Defendants shall make available such non-privileged information to the United States at the same time that such information is made available to prospective Purchasers.

D. Defendants shall permit prospective Purchasers of the Divestiture Assets to have reasonable access to personnel and access to any and all financial, operational, or other documents and information as is customarily provided as part of a due diligence process for a transaction of this type.

E. Defendants shall provide to prospective Purchasers, and to the United States, information relating to the personnel in the sales and account management of the Divestiture Assets to enable such Purchasers to make offers of employment to those persons. Prior to Divestiture, defendants shall not interfere with any negotiations by any Purchasers to employ any such persons. For a period of one year from the date of the completion of each Divestiture, defendants shall not hire or solicit to hire any such person who was hired by any Purchasers, unless such individual has (1) a written offer of employment from a third party in such capacity or (2) a written notice from such Purchaser stating that the Purchaser does not intend to continue to employ the individual in such capacity.

F. Defendants shall warrant to all Purchaser(s) that the contracts included in the Divestiture Assets are in full force and effect on the date that binding agreements for the Divestiture are signed.

G. Defendants shall use their best efforts to Divest the Divestiture Assets and procure any consents and approvals required for such Divestitures.

H. Pursuant to a transition services agreement on customary commercial terms and conditions and approved by the United States, at the Purchaser's request, defendants will provide certain transitional support services for the Divestiture Assets for a period of time not to exceed eighteen (18) months from the date of Divestiture. These services may include claims processing, computer operations support, eligibility, enrollment, utilization management and run-out administration and such other services as are reasonably necessary to operate the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the Divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Purchaser(s) as part of a viable, ongoing business engaged in the sale of Commercial Health Insurance Products. The Divestiture of the Divestiture Assets may be made to one or more Purchasers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the Divestitures will remedy the competitive harm alleged in the Complaint. The Divestitures, whether pursuant to Section IV or Section V of this Final Judgment; (1) Shall be made to Purchaser(s) that, in the United States's sole judgment, each have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of Commercial Health Insurance Products; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between defendants and any Purchaser gives defendants the ability to interfere with the Purchaser's ability to compete effectively.

J. If, before defendants can Divest the Boulder Contract, the University of Colorado has terminated its entire

contract with PacifiCare for commercial HMO insurance or the portion thereof that relates to the Boulder membership as defined in this Final Judgment and has awarded that entire contract or the Boulder portion to a Commercial Health Insurance plan other than United or PacifiCare, then defendants shall not be required to Divest the Boulder Contract or any other contracts or assets in the Boulder MSA. If the University of Colorado has not terminated the contract entirely or the Boulder portion but, in the United State's sole discretion, Divesting the Boulder Contract as it is defined in this Final Judgment would be unreasonably disruptive to the University of Colorado, then defendants shall instead be required to Divest contracts identified by United covering at least, 6,066 members who reside or work in Boulder and who obtain health coverage under United or PacifiCare contracts for Commercial Health Insurance Products.

V. Appointment of Trustee

A. If defendants have not Divested the Divestiture Assets within the time period specified in Section IV, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the Divestiture of any of the Divestiture Assets not already Divested or subject to a binding Divestiture agreement.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to Divest the Divestiture Assets. The trustee shall have the power and authority to accomplish the Divestitures to Purchaser(s) acceptable to the United States: (1) At such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment; (2) subject to Section V.C below, by hiring at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the Divestitures; and (3) with such other powers as the Court deems appropriate.

C. Defendants shall not object to any Divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Divestiture Assets sold by the trustee and for all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the Divestitures and the speed with which they are accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required Divestitures, including best efforts to effect all necessary regulatory approvals and consents. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, and records that relate to the Divestiture Assets, and defendants shall develop financial or other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to customary confidentiality assurances.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the Divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to Divest the Divestiture Assets.

G. If the trustee has not accomplished such Divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required Divestitures; (2) the reasons, in the trustee's judgment, why the required Divestitures have not been accomplished; and (3) the trustee;s recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of this Final Judgment which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following a execution of a definitive Divestiture agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed Divestitures pursuant to Section IV or Section V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the Divestitures, shall notify the United States of the proposed Divestitures. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed Divestiture and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Divestiture Assets that is the subject of the binding contract, together with full details of same.

B. Within fifteen (15) calendar days of its receipt of such notice, the United States may request from defendants, the trustee, the proposed Purchaser(s), or any other third party additional information concerning the proposed Divestitures, the proposed Purchaser(s), and any other potential Purchaser(s). Defendants and the trustee shall furnish any additional relevant information requested from them promptly, and in all events within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the trustee, the proposed Purchaser(s), and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is

one, stating whether it objects to the proposed Divestitures. If the United States provides written notice to defendants and the trustee that it does not object, then the Divestitures may be consummated, subject only to defendants' limited right to object to the Divestiture under Section V.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Purchaser(s) or upon objection by the United States, such Divestitures proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.C, a Divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Injunctive Provisions

A. Effective one (1) year after the entry of this Final Judgment, United shall discontinue renting the CTN provider network in the State of California and shall not rent the CTN provider network for the period of the Final Judgment.

B. Effective upon the closing of the Transaction, United shall not:

(1) Communicate with CTN in any regarding the introduction of new United or CTN Commerical Health Insurance Products, in California or elsewhere;

(2) Permit any United customer, other than a Legacy United Customer or a Transition United Customer, to access the CTN network, except that such access by a Transition United Customer shall cease on or before July 5, 2006;

(3) Have any involvement with CTN relating to negotiations over rates or other terms with any physician or hospital in any provider network;

(4) Have any involvement with CTN relating to the development of any provider network;

(5) Exchange with CTN any non-public information (including, but not limited to, information relating to PacifiCare's network or the sale or marketing of Commercial Health Insurance Products) that is not necessary for United's rental of provider services from or access by Legacy United Customers or Transition United Customers to CTN's network;

(6) Engage in any joint efforts with CTN to sell or market Commercial Health Insurance Products.

This Section VII.B shall not affect CTN's existing network maintenance and network standards obligations and any other existing CTN obligations to United with respect to providers in the CTN network.

C. United shall develop and enact procedures to ensure, during the time period in which it continues to rent CTN's network in California, that any non-public information obtained from CTN about CTN's network, or any other provider network, is not disseminated to persons other than those with a legitimate need for it. Such procedures shall ensure that:

(1) Any non-public information obtained from CTN about CTN's network is not disseminated to any United employee who has responsibility for either: (a) Negotiating with physicians or hospitals in any provider network; or (b) selling Commercial Health Insurance Products to any customer other than a Legacy United Customer or a Transition United Customer;

(2) Any non-public information about PacifiCare's network that is not necessary for United's rental or provider services from or access by Legacy United Customers or Transition United Customers to CTN's network is not disseminated to any CTN employee; and

(3) Neither United nor CTN has any involvement in the marketing or sale of Commercial Health Insurance Products by the other.

D. Within ten (10) business days of the entry of the Final Judgment, United shall submit to the United States a document setting forth in detail its proposed plan for complying with the injunctions in this Section VII. The United States shall have the sole discretion to approve or disapprove United's proposed compliance plan, and shall notify United within five (5) business days of its decision. If United's proposal is rejected, the United States shall state its reasons for doing so, and United shall be given the opportunity to submit, within five (5) business days of receiving the notice of rejection, a revised compliance plan.

E. From the closing of the Transaction, United shall not require any physician practicing in Tucson, as a condition for participating in any of United's networks for its Commercial Health Insurance Products, to agree to participate in United's network for any Medicare Health Insurance Product. Similarly, United shall not require any physician practicing in Tucson, as a condition for participating in United's network for any Medicare Health Insurance Product, to agree to participate in any of United's networks for its Commercial Health Insurance Products. United may, however, permit any physician who wants, and voluntarily agrees, to participate in one or more of its networks to do so without violating this Final Judgment. This provision does not apply to (i) contracts entered into by United or PacifiCare prior to the closing of the Transaction that provide for participation in both Commercial Health Insurance Products and Medicare Health Insurance Products; or (ii) any contractual provision that obliges physicians to participate with respect to all Commercial Health Insurance Products of either defendant.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the Divestitures and other remedies set forth herein have been completed, whether pursuant to Section IV or Section V, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have made to solicit a Purchaser(s) for the Divestiture Assets and to provide required information to prospective Purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate the Divestiture Assets. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one (1) year after the Divestitures required by this Final Judgment have been completed,

defendants shall preserve all records of all efforts made to preserve the Divestiture Assets and effect the Divestitures.

IX. Preservation of Assets

Until the Divestitures required by the Final Judgment have been accomplished, defendants shall: (1) Preserve and maintain the value and goodwill of the Divestiture Assets; (2) operate the Divestiture Assets in the ordinary course of business; and (3) take no action that would jeopardize, delay, or impede the Divestiture of the Divestiture Assets.

X. Financing

Defendants shall not finance all or any part of any Purchase made pursuant to Section IV or V of this Final Judgment.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the United States's option, to require that defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

XII. No Reacquisition

Defendants may not reacquire any of the Divestiture Assets during the term of this Final Judgment, provided, however, that nothing herein shall affect defendants' ability to bid or offer to provide health care coverage or services, including to employers and members covered by contracts or policies included in the Divestiture Assets.

XIII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire five (5) years from the date of its entry.

XV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Filed: March 3, 2006.

United States of America, Plaintiff, v. UnitedHealth Group, Inc., and PacifiCare Health Systems, Inc., Defendants.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement to assist the Court in assessing the proposed Amended Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

The United States filed a civil antitrust Complaint under section 15 of the Clayton Act, 15 U.S.C. 25, on December 20, 2005, alleging that the proposed acquisition by UnitedHealth Group, Inc. ("United") of PacifiCare Health Systems, Inc. ("PacifiCare") would violate section 7 of the Clayton Act ("Section 7"), 15 U.S.C. 18.

The Complaint alleges that the proposed acquisition may substantially lessen competition in the following markets: (i) The sale of commercial health insurance plans to small-group employers (those with 2–50 employees) in the Tucson, Arizona Metropolitan Statistical Area ("MSA"); (ii) the purchase of physician services in the Tucson MSA; (iii) the purchase of physician services in the Boulder, Colorado MSA; and (iv) the sale of commercial health insurance plans and the purchase of health care provider services in numerous MSAs throughout California.

When the Complaint was filed, the United States also filed a proposed settlement that would permit United to complete its acquisition of PacifiCare but would require divestitures of certain assets and injunctive relief sufficient to preserve competition in the sale of commercial health insurance to small-group insurers in Tucson, the purchase of physician services in Tucson and Boulder, and the sale of health insurance and purchase of physician and hospital services in California.

The United States filed a proposed Amended Final Judgment on March 2, 2006 which will allow United to offer in-network benefits to new members requiring medical care in the State of California pending completion of certain operational steps necessary for

United to transition to the PacifiCare network.

Plaintiff and Defendants have stipulated that the proposed Amended Final Judgment may be entered after compliance with the APPA. Entry of the proposed Amended Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Amended Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

United is a Minnesota corporation with its principal place of business in Minnetonka, Minnesota. It offers a variety of HMO, PPO, Point-of-Service ("POS") health plans Self-Directed Health Plans ("SDHP"), and other products. United also purchases physician services for its health plan members, which it offers to members through United's health plans. United is one of the leading health insurers in the United States and reported in excess of $37 billion in revenues for 2004.

PacifiCare is a Delaware corporation with its principal place of business in Cypress, California. Like United, PacifiCare offers group health insurance products, such as HMOs, PPOs, Exclusive Provider Organizations ("EPOs"), and SDHP, and also buys physician services, which it offers to its members through PacifiCare's health plans. PacifiCare reported $12.2 billion in revenues for 2004.

B. The Acquisition

United entered into an Agreement and Plan of Merger ("Agreement") with PacifiCare dated July 6, 2005. Pursuant to the terms of the Agreement, PacifiCare merged into United on December 20, 2005, after the defendants received all of the necessary regulatory approvals. PacifiCare shareholders received 1.1 shares of United stock and $21.50 cash for each PacifiCare share owned.

C. Anticompetitive Effects of the Acquisition

1. The Sale of Health Insurance to Small-Group Employers in the Tucson MSA

The Complaint alleges that United's proposed acquisition of PacifiCare is likely to substantially lessen competition in the sale of commercial health insurance to small-group employers in Tucson, Arizona in violation of section 7 of the Clayton Act.

a. The Sale of Commercial Health Insurance to Small-Group Employers Is a Relevant Product Market

Commercial health insurance companies, such as United and PacifiCare, contract with employers and other groups to provide health insurance services. The market for the sale of commercial health insurance to small-group employers is separate from the market for the sale of such insurance to larger groups.

Unlike larger-group employers, small-group employers cannot feasibly self fund their employees' health benefits. They do not have a sufficient employee population across which they can spread financial risk, nor do they typically have multiple locations that reduce risk through geographic diversity. Because self funding is not a viable option for small-group employers, they would not switch to self funding in sufficient numbers to make a small but significant increase in the price of fully-insured health plans to all small-group employers unprofitable.

The different markets are also evident in the ways that commercial health insurance is regulated, sold, and purchased. Many states have regulations that apply only to the sale of commercial health insurance to small-group employers. In Arizona, state law defines small employers as those having 2–50 employees, and certain statutes apply specifically to insurance sold to those groups. A.R.S. section 20–2301(A)(22). See, e.g., A.R.S. sections 20–2304, 20–2311.

The way in which commercial health insurance is sold also distinguishes the small and large group markets. Commercial health insurers, like United and PacifiCare, engage in extensive negotiations over price and other contract terms with large employers. These negotiations result in different large groups paying different prices for health plans from the same insurer. In contrast, commercial health plans conduct fewer and more limited negotiations with small-group employers. The insurer often sets the price at which it offers its health plans to small groups and those groups decide to accept or reject largely based on public information.

Because of these differences in the way that commercial health insurance is sold to large and small groups, health insurers employ staff dedicated solely to marketing and selling commercial health insurance plans to small-group employers, and develop and implement separate strategic plans for such customers. Rather than employ dedicated benefit administrators, small-group insurers are more likely to rely on brokers, who frequently specialize in working with small-group employers, to assist in various aspects of an employer's sponsorship of a health benefit plan, such as plan design consultation, and assistance with the bidding process.

Health insurers, brokers, state insurance commissions, and the purchasers themselves consider the small-group market to be separate and distinct.

b. The Tucson MSA Is a Relevant Geographic Market

Health insurance plan enrollees seek relationships with physicians and other health care professionals and institutions that are located in the metropolitan area in which they live and work. Commercial health insurers and brokers consider the area in and around Tucson, Arizona to be a separate and distinct area for the sale of health plans to small-group employers. The United States Department of Commerce has defined the area in and around Tucson, Arizona as an MSA.

c. Competitive Effects in the Market for the Sale of Commercial Health Insurance to Small-Group Employers in the Tucson MSA

Small-group employers rely on competition to keep health benefit plans affordable. Before the merger, small-group employers in Tucson could choose between United, PacifiCare, and one or two other options. PacifiCare was the low-price competitor in the market, an important consideration for small-group employers, which tend to be especially price-sensitive.

United and PacifiCare were the second and third largest sellers of commercial health insurance in Tucson. Market shares drop off substantially after the top three insurers. With few alternatives and no low-cost alternative, the merged entity would have been able to increase prices or reduce the quality of its health plans offered to small-group employers.

2. The Purchase of Physician Services in the Tucson and Boulder MSAs

United's acquisition of PacifiCare will also increase its purchasing power over physician services in the Tucson and Boulder MSAs, which would enable United to reduce the rates paid for those services.

a. The Purchase of Physician Services Is a Relevant Product Market

Physician services are those medical services provided and sold by physicians. The only purchasers of

these services are individual patients or commercial and government health insurers that purchase these services on behalf of individual patients. As a result, physicians cannot seek other purchasers in the event of a small but significant decrease in the prices paid by these buyers. Nor will such a price decrease cause physicians to stop providing their services or shift towards other activities in numbers sufficient to make such a price reduction unprofitable.

b. The Tucson and Boulder MSAs Are Relevant Geographic Markets

Like the sale of commercial health insurance, the market for physician services is local. Patients choose physicians in the metropolitan area in which they live and work. Physicians invest time and expense in building a practice and would incur costs in moving to a new geographic area. Therefore, a decrease in the rice paid to physicians in Tucson or Boulder would not cause physicians to relocate their practices in numbers sufficient to make such a price reduction unprofitable. The United States Department of Commerce has defined the areas in and around Tucson, Arizona and Boulder, Colorado as MSAs.

c. Competitive Effects in the Market for the Purchase of Physician Services in the Tucson and Boulder MSAs

The contract terms a physician can obtain from a commercial health insurance company like United depend on the physician's ability to terminate (or credibly threaten to terminate) the relationship if the company demands unfavorable contract terms. A physician's ability to terminate a relationship with a commercial health insurer depends on his or her ability to replace the amount of business lost from the terminated insurer's patients, and the time it would take to do so. Failing to replace lost business expeditiously is costly.

Physicians have only a limited ability to encourage patients to switch health plans. To retain a patient after terminating a plan requires the physician to convince patients to either switch to another employer-sponsored plan in which the physician participates or to pay considerably higher out-of-pocket costs, whether in the form of increased copayments for use of an out-of-network physician or by absorbing the total cost of the services. As a result, a physician who terminates his or her relationship with United, for example, could expect to lose a significant share of his or her United patients. The ability to make up the lost business is diminished when a physician's non-United sources of patients are more limited. Consequently, the cost of replacing United patients will be greater the larger United's share of all patients in an area.

United's acquisition of PacifiCare will give it control over both a large share of revenue of a substantial number of patients in Tucson and Boulder and a large share of all patients in those areas. Since physicians have a limited ability to encourage patient switching, the merger will significantly increase the number of physicians in Tucson and Boulder who are unable to reject United's demands for more adverse contract terms. Thus, the acquisition will give United the ability to unduly depress physician reimbursement rates in Tucson and Boulder, likely leading to a reduction in quantity or degradation in the quality of physician services.

3. The Sale of Commercial Health Insurance and the Purchase of Health Care Provider Services in California

Before its acquisition of PacifiCare, United did not actively sell commercial health insurance in California. Its California membership consisted of employees of large, national or regional employers that self-fund their health benefit plans and use United only for administrative services.

Since 2000, United has rented the provider networks of CareTrust Networks, a wholly-owned subsidiary of Blue Shield of California ("Blue Shield"), to serve its California-based commercial members. Blue Shield is one of the largest commercial health insurers in California, with substantial membership throughout the state. PacifiCare and Blue Shield are among each other's principal competitors for the sale of commercial health insurance and for the purchase of physician and hospital services. As a result of the transaction, United obtained PacifiCare's California membership and became one of Blue Shield's principal competitors for the sale of commercial health insurance and the purchase of provider services.

a. Relevant Product Markets and Geographic Markets in California

PacifiCare, and now United, competed with Blue Shield in the sale of commercial health insurance to groups of all sizes. Similarly, PacifiCare competed with Blue Shield to acquire health care provider services, from both physicians and hospitals, in MSAs throughout the state.

b. Competitive Effects in the Markets for the Sale of Commercial Health Insurance and the Purchase of Health Care Provider Services

United's acquisition of PacifiCare creates the potential for both coordinated and unilateral anticompetitive effects. Through its acquisition of PacifiCare, United assumed PacifiCare's place in the California markets for the sale of commercial health insurance and the purchase of healthcare provider services and thus became one of Blue Shield's most important competitors. United and Blue Shield will have access to highly sensitive competitive information about the other company, dramatically increasing each company's ability to coordinate prices charged for commercial health insurance and prices paid to health care providers. Similarly, the importance of this relationship may lead each company to be less aggressive when negotiating with employer groups or assembling provider networks.

Pursuant to the network access agreement between United and CareTrust, United has access to certain information about the CareTrust provider network (and thus about Blue Shield's provider network), including provider contract negotiations and terminations, reimbursement and claims processing issues, new commercial health insurance products, and network development. The network access agreement requires Blue Shield to give United 90 days' notice if it changes its fee schedules. Similarly, United must inform Blue Shield of the development of any new products. In addition, the network access agreement also ties United's hospital reimbursement levels to those of Blue Shield by requiring Blue Shield to use its best efforts to persuade hospitals to accept reimbursement levels at a certain percentage of Blue Shield's reimbursement levels.

III. Explanation of The Proposed Amended Final Judgment

The proposed Amended Final Judgment is designed to eliminate the anticompetitive effects identified in the Complaint by requiring United to divest certain commercial health insurance contracts in the Tucson and Boulder MSAs. It also requires United to stop exchanging certain information with CareTrust Networks in California and, one year after entry of the Amended Final Judgment, to discontinue renting the CareTrust provider network.

In Tucson, the proposed Amended Final Judgment requires United to identify and divest commercial health

insurance contracts covering at least 54,517 members who reside or work in the Tucson MSA. This is the total number of commercially insured members in Tucson that PacifiCare reported as of June 30, 2005. Although United has some discretion in determining which contracts to include in this divestiture package, it must include contracts covering at least 7,581 members covered by contracts with small-group employers—the number of Tucson-resident members covered under such small-group contracts that PacifiCare reported as of June 30. This divestiture addresses the competitive harms alleged in the Complaint by requiring United to divest enough small-group contracts to leave it with approximately the same market share of the small-group market, and the same number of commercially insured lives, that it had before acquiring PacifiCare.

The proposed Amended Final Judgment also prohibits United from requiring any physician practicing in the Tucson MSA, as a condition for participating in any of United's networks for its commercial health insurance products, to agree to participate in United's network for any Medicare health insurance product. Similarly, United will be prohibited from requiring Tucson physicians, as a condition for participating in any of its Medicare plans, to participate in any of its commercial health insurance plans. The prohibition against using this type of contractual requirement, commonly referred to as an "all-products" clause, was included in the proposed Judgment because a substantial percentage of PacifiCare's overall membership in Tucson was enrolled in its Medicare HMO plan marketed under the name Secure Horizons. Many physicians in Tucson derived a substantial percentage of their revenue from patients enrolled in this plan. This is relevant to the competitive effects in the market for the purchase of physician services because in calculating the percentage of a physician's revenue represented by United and PacifiCare, a physician's *total* revenue was taken into account—including from all commercial health plans, government programs such as Medicare and Medicaid, and private Medicare Advantage and Medicare HMO plans such as Secure Horizons. Without this injunction, United might have been able to use an all-products clause to force doctors in Tucson to participate in both its commercial and Medicare plans. Had it done so, United might have accounted for a much larger share of the total payments for many physician practices in Tucson. The injunction against using such an all-products clause ensures that Tucson-area doctors will be free to choose whether to participate in United's networks for its commercial plans, its networks for its Medicare plans, or both.

In Boulder, the proposed Amended Final Judgment requires United to divest either the 6,066 members residing in the Boulder MSA who are covered under PacifiCare's current HMO contract with the University of Colorado, or an equivalent number of Boulder-area members covered under other contracts. Unlike its Tucson membership, PacifiCare's membership in the Boulder MSA is concentrated in a smaller number of very large contracts. Its HMO contract with the University of Colorado is its largest contract in Boulder; the 6,066 members residing in Boulder who are covered under that contract account for nearly half of PacifiCare's total commercial membership in Boulder. Thus, PacifiCare's bargaining position in its negotiations with Boulder-area doctors would have been very different had it not had this HMO contract. Without that contract, PacifiCare's membership in Boulder would have been substantially less and United's acquisition of that much smaller membership would not have generated the same level of competitive concern that led the United States to challenge this transaction in the Boulder market. That, in addition to other facts relating to the insurance market in Boulder, led the United States to conclude that the divestiture of the 6,066 members covered under the University HMO contract (or the divestiture of an equivalent number of members covered under other contracts) will be sufficient to remedy the competitive harm alleged in the Complaint. Finally, an injunction against United using an all-products clause in Boulder was unnecessary because PacifiCare's SecureHorizons enrollment in Boulder constituted a significantly smaller percentage of its overall membership in Boulder compared to Tucson.

The divestitures in both Tucson and Boulder must be accomplished by selling or conveying the contracts to one or more purchasers that, in the sole discretion of the United States, will be viable, ongoing competitors in the relevant markets. The divestitures (i) shall be made to purchasers that each have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of commercial health insurance products, and (ii) shall be accomplished so as to satisfy the United States that none of the terms of any agreement between United and any purchaser gives United the ability to interfere with the purchaser's ability to compete effectively.

In California, the proposed Amended Final Judgment requires United immediately to stop exchanging certain kinds of information with CareTrust Networks, a wholly owned subsidiary of Blue Shield. United is prohibited from communicating with CareTrust about, among other things, new product introductions, negotiations over rates or other terms with physicians, or the development of any new provider networks. Those kinds of information exchanges were part of the basis for the competitive harm alleged in the Complaint. The proposed Amended Final Judgment also requires to discontinue renting the CareTrust provide network entirely effective one year after entry of the Amended Final Judgment for customers existing before the transaction was completed. United is permitted to continue renting CareTrust's network for up to one year in order to minimize any disruption caused by the transition of its current members from the CareTrust provider network to the PacifiCare network that United has acquired as part of this transaction.

The United States filed a proposed Amended Final Judgment to allow United's new customers (those receiving quotes after December 20, 2005, the day the Complaint and original Proposed Final Judgment were filed) to access the CareTrust Network until July 5, 2006. This modification will allow United to continue to offer in-network benefits to those members requiring such benefits in California. Using its newly acquired PacifiCare network for this purpose is impractical until United can complete the process of integrating certain features of the PacifiCare network and providers with its existing United claims processing and administrative systems.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered as well as costs and reasonable attorney's fees. Entry of the proposed Amended Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Amended Final Judgment

has no prima facia effect in any subsequent private lawsuit that may be brought against United or PacifiCare.

V. Procedures Available for Modification of the Proposed Amended Final Judgment

The parties have stipulated that the proposed Amended Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Amended Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Amended Final Judgment within which any person may submit to the United States written comments regarding the proposed Amended Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date this Competitive Impact Statement is published in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Amended Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H St., NW., Suite 4000, Washington, DC 20530.

The proposed Amended Final Judgment provides that the Court will retain jurisdiction over this action and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Amended Final Judgment.

VI. Alternatives to the Proposed Amended Final Judgment

The Department considered, as an alternative to the proposed Final Judgment, a full trial on the merits of the Complaint against the defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against United's acquisition of PacifiCare. The Department is satisfied, however, that the divestitures of the assets and other relief contained in the proposed Amended Final Judgment will preserve viable competition in the relevant markets alleged in the Compliant.

VII. Standard of Review Under the APPA for Proposed Amended Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60)-day comment period, after which the Court shall determine whether entry of the proposed Amended Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> A. The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> B. The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1).

As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

"Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Amended Final Judgment, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. The law requires that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

A proposed final judgment, therefore, need not eliminate every anticompetitive effect of a particular practice, nor guarantee free competition in the future. Court approval of a final judgment required a standard more flexible and less strict than the standard required for a finding of liability: "[A]proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), aff'd sub nom. Maryland v. *United States*. 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by brinding a case in the first place," it follows that

"the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

The proposed Amended Final Judgment here offers strong and effective relief that fully addresses the competitive harm posed by the transaction.

VIII. Determinative Documents

There are no determinative materials or documents of the type described in section 2(b) of the APPA, 15 U.S.C. 16(b), that were considered by the United States in formulating the proposed Amended Final Judgment.

Dated: March 3, 2006.

Respectfully Submitted,

Nicole S. Gordon,
Jon B. Jacobs (DC Bar #412249),
Richard Martin,
Steven Brodsky,
Paul Torzilli,

Attorneys, Litigation I Section, Antitrust Division, United States Department of Justice, City Center Building, 1401 H Street NW/, Suite 4000, Washington, DC 20530, (p) 202.307.0001, (f) 202.307.5802.

Certificate of Service

I hereby certify that on March 3, 2006, I caused the foregoing to be electronically filed with the Clerk of the Court by using the Electronic Case Filing System, which will send a notice of electronic filing to:

Laura A. Wilkinson, Weil, Gotshal & Manges LLP, 1300 Eye Street NW., Suite 900, Washington, DC 20005.

I further certify that I sent the foregoing via electronic mail to:

Fiona Schaeffer, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153.

Nicole S. Gordon,

Attorney, Litigation I Section, Antitrust Division, United States Department of Justice.

[FR Doc. 06–2591 Filed 3–17–06; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Child Labor Education Initiative

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

Announcement Type: Notice of Intent to Solicit Cooperative Agreement Applications.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor. Affairs (ILAB), intends to obligate up to approximately U.S. $15 million to support cooperative agreement awards to organizations to develop and implement formal, non-formal, and vocational education projects as a means to combat exploitive child labor in the following three countries: (1) Egypt, (2) Peru, and (3) Tanzania. ILAB intends to solicit cooperative agreement applications from qualified organizations (*i.e.*, any commercial, international, educational, or non-profit organization capable of successfully developing and implementing education projects) to implement projects that focus on innovative ways to provide educational services to children engaged, or at risk of engaging, in exploitive labor. The projects should address the gaps and challenges to basic education found in the countries mentioned above. Please refer to *http://www.dol.gov/ILAB/grants/main.htm* for examples of previous notices of availability of funds and solicitations for cooperative agreement applications.

Information on the specific sectors, geographical regions, and funding levels for the potential projects in the countries listed above will be addressed in a solicitation(s) for cooperative agreement applications to be published prior to September 30, 2006. Potential applicants should not submit inquiries to USDOL for further information on these award opportunities until after USDOL's publication of the solicitations. For a list of frequently asked questions on Child Labor Education Initiative Solicitations for Cooperative Agreement Applications, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

USDOL intends to hold a bidders' meeting on April 21, 2006 to answer questions potential applicants may have on Child Labor Education Initiative Solicitations for Cooperative Agreement process. Please see below for more information on the bidders' meeting.

DATES: *Key Dates:* A specific solicitation(s) for cooperative agreement applications will be published in the **Federal Register** and remain open for at least 30 days from the date of publication. All cooperative agreement awards will be made on or before September 30, 2006.

ADDRESSES: *Submission Address:* Applications, in response to solicitations published in the **Federal Register**, must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Harvey. E-mail address: *harvey.lisa@dol.gov.* All inquiries should make reference to the USDOL Child Labor Education Initiative—Solicitations for Cooperative Agreement Applications.

Bidders' Meeting: A bidders' meeting will be held in Washington, DC at the Department of Labor on Friday, April 21, 2006 from 9:30 a.m. to 11:30 a.m. The purpose of this meeting is to provide potential applicants with the opportunity to ask questions concerning the Child Labor Education Initiative Solicitation for Cooperative Agreement process. To register for the meeting, please call or e-mail Ms. Alexa Gunter (Phone: 202–693–4843; e-mail: *gunter.alexa@dol.gov*) by April 7, 2006. Please provide Ms. Gunter with contact information including name, organization, address, phone number, and e-mail address of the attendees.

Background Information: Since 1995, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC). ILAB has also supported the efforts of other organizations involved in efforts to combat child labor internationally through the promotion of educational opportunities for children-in-need. In total, ILAB has provided over U.S. $400 million to ILO-IPEC and other organizations for international technical assistance to combat abusive child labor around the world.

In FY 2006, USDOL's appropriations included funds earmarked for ILO–IPEC and additional funding for bilateral assistance to improve access to basic education internationally in areas with a high rate of abusive and exploitive child labor. All FY 2006 funds will be obligated on or before September 30, 2006.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety, and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Eliminating child labor depends, in part, on improving access to, quality of, and relevance of educational and training opportunities for children under 18 years of age. Without improving such opportunities, children withdrawn from exploitive forms of labor may not have viable alternatives to child labor and may be more likely to return to such work or resort to other hazardous means of subsistence.

In addition to increasing access to education and eliminating exploitive child labor through direct withdrawal and prevention services to children, the Child Labor Education Initiative has the following four strategic goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

3. Strengthen national institutions and policies on education and child labor; and

4. Ensure the long-term sustainability of these efforts.

When working to increase access to quality basic education, USDOL strives to complement existing efforts to eradicate the worst forms of child labor, to build on the achievements of and lessons learned from these efforts, to expand impact and build synergies among actors, and to avoid duplication of resources and efforts.

Signed at Washington, DC, this 13th day of March, 2006.

Eric Vogt,

Grant Officer.

[FR Doc. E6–3968 Filed 3–17–06; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2006–01; Exemption Application No. D–11216 et al.]

Grant of Individual Exemptions; Edward D. Jones & Co., L.P. (the Applicant)

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.

Edward D. Jones & Co., L.P. (the Applicant) Located in St. Louis, Missouri

[Prohibited Transaction Exemption No. 2006–01; Application No. D–11216]

Exemption

The restrictions of sections 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 to the extension of credit to the Applicant, by certain IRAs whose assets are held in custodian accounts by the Applicant, a party in interest and a disqualified person with respect to the IRAs, in connection with the Applicant's use of uninvested IRA cash balances (Free Credit Balance(s)) in such accounts. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) Neither the Applicant nor any affiliate has any discretionary authority or control with respect to the investment of the cash balances of the IRA that are held in the Free Credit Balance or provides investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(b) Edward Jones credits the IRA with monthly interest on its Free Credit Balance at an annual rate no less than the bank national index rate for interest checking, as reported in the Bank Rate Monitor. This rate will be subject to a minimum rate level of 10 basis points (0.10%);

(c) The interest rate will be no less than the rate paid by Edward Jones on non-IRA Free Credit Balances;

(d) The IRA independent fiduciary has the ability to withdraw the Free Credit Balance at any time without restriction;

(e) The Applicant provides in writing, to the IRA independent fiduciary, prior to any transfer of the IRA's available cash into a Free Credit Balance account, an explanation (i) that funds invested in a Free Credit Balance are not segregated and may be used in the operation of the business of the Applicant; (ii) of the method to be used for crediting interest to the Free Credit Balance; and (iii) that the funds are payable to the IRA on demand;

(f) On the basis of the information disclosed pursuant to paragraph (e) above, the IRA independent fiduciary approves the transfer of the IRA's available cash into a Free Credit Balance account. If the disclosure includes a specified date before which the independent fiduciary must object to the transfer of the IRA's existing cash balances into a Free Credit Balance account, failure of the IRA independent fiduciary to object to the transfer by that date will be deemed an approval by the IRA independent fiduciary of the transfer to and holding of the IRA's available cash in the Free Credit Balance account.

The Applicant provides, with or as part of the customer's statement of account, no less frequently than once every three months, notification that the IRA independent fiduciary may, at any time and without penalty, direct the Applicant in writing to withdraw the IRA's available cash from the Free Credit Balance account. Failure of the IRA independent fiduciary to provide such written direction will be deemed an approval by the IRA independent fiduciary of the transfer to and holding

of the IRA's available cash in the Free Credit Balance account; and

(g) The Applicant periodically provides a written statement subsequent to the proposed transaction informing the IRA independent fiduciary that (i) such funds are not segregated and may be used in the operation of the business of such broker or dealer, and (ii) such funds are payable on demand.

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 June 29, 2005 at 70 FR 37437.

Written Comments

The Department received 107 written comments from interested persons in response to the Notice. The Department forwarded copies of the comments to the Applicant and requested that the Applicant address in writing the various concerns raised by the commentators. Many of the comments fell into broad categories to which the Applicant responded collectively. Where a single commentator raised a unique issue, such issue was responded to individually. The comments and the Applicant's responses are summarized below.

Four commenters favored granting the exemption, and one expressed no objection. Six posed questions regarding the exemption without taking a position. The remaining 96 commenters objected to granting the exemption. Of those, 22 did not describe the reasons for their objections, leaving 74 that made substantive comments on the proposed exemption.

The principal objection to the exemption (reflected in 36 of the comments) was that transferring IRA cash to Free Credit Balances in place of the currently-used money market fund would negatively affect the annual rate of return earned by the IRAs, providing a lower checking account interest rate instead of a money market rate. While the money market rates were low at one time, the commenters pointed out that money market rates have risen to a level that is considerably higher than the 10 basis points described as the current rate in the Notice. Related to this concern was the view that the Applicant should not impose a $3/month low balance fee on the Retirement Shares class of its money market fund, with some pointing out that the Applicant already charges an IRA custody fee. (One commenter, by contrast, saw the Notice as unnecessary because the Applicant already has the option to impose a minimum account balance requirement, which the person thought would encourage IRA contributions—like some others, apparently viewing the low balance fee as being imposed on IRAs themselves rather than limited to the money market fund.)

The Applicant represents that these comments reflect a misunderstanding of the context in which the Free Credit Balance arrangement is to be made available. The large number of small accounts in the Retirement Shares class has resulted in increased administrative expense to the money market fund, depressing investment return. The Applicant has determined to impose a minimum balance fee on the Retirement Shares, as is already the case for the other class of fund shares, to discourage small accounts and thereby restore returns to the level of other money market funds. However, it was concerned that this would leave IRAs without a convenient investment for their available cash generated through interest and dividends. It therefore postponed imposing the minimum balance fee until it could make Free Credit Balances available to the IRAs.

Several of these commenters, along with two others, noted that the minimum balance fee would represent additional income to the Applicant, to which they objected, and some added that this additional income was unnecessary since the Applicant already charges an IRA custody fee. The Applicant represents that three points are relevant here. First, the Applicant does not retain the entire low balance fee; it is in part retained by the money market fund. Second, it is contemplated that only a minimal number of customers would pay the fee instead of moving their balance to the cash interest option. Third, as an offset to any fees that the Applicant might collect, if the fund has fewer accounts as a result of the minimum balance fee—as would likely be the case—the Applicant's income would decrease, as the fund would pay to the Applicant lower transfer and dividend disbursing agent fees (which are based on the number of shareholder accounts). For these reasons, the Applicant represents that the minimum balance fee is not expected to increase the Applicant's bottom line, as one commenter suggested, or otherwise benefit the Applicant at the fund's expense, as several others alleged.

The other principal objection, reflected in 17 of the comments, was that the change to using Free Credit Balances of the broker-dealer as the IRAs' cash vehicle would place the IRAs' assets at higher risk, because the money would no longer be "protected" or safe and/or would be used for the Applicant's general business operations. The Applicant's response states that several of the commenters do not appear to understand the nature of the current cash vehicle. While a money market fund attempts to maintain stability of principal, its assets are not insured, either by the Federal Deposit Insurance Corporation (as one commenter believed) or otherwise, and its investments are subject to risk of loss. As stated in the fund prospectus, the fund shares are not guaranteed or insured by any bank, the U.S. government or any government agency. The Applicant represents that in fact, the Free Credit Balances would be subject to reduced risk in this regard, assuming that they are intended for the purpose of purchasing securities (as would normally be the case for an IRA account), because they would be covered by SIPC insurance. SIPC insurance would protect the IRA holders against loss in the event the Applicant was to file for bankruptcy (a concern expressed in at least four of the comments). In addition, Free Credit Balances are subject to reserve requirements. These provide further protection to customers against a broker-dealer's misuse of the funds or insolvency by requiring the broker-dealer to deposit the amount of its liabilities to customers in excess of amounts owed to it by customers in a specially designated bank account. The effect of the reserve requirements is to restrict the use of the money to the financing of the broker-dealer's customer-related business, not permitting the money to be used beyond that for the broker-dealer's general business operations.

The Applicant represents that some of these comments reflected misperceptions about the nature of the Free Credit Balances. Two commenters assumed that the cash placed in the Free Credit Balances would no longer be part of their IRAs. One was concerned that the cash would therefore be at increased risk because it would lose the protection that IRA funds have from creditors in the event of his personal bankruptcy. The Applicant represents that that is not the case. The money in the Free Credit Balances would still be part of the IRAs, and as such would be protected from bankruptcy and exempt from income tax to the same extent as any other assets of the IRAs.

Several of these commenters were concerned that the cash in the Free Credit Balances would not be immediately available on demand, or otherwise that the change would mean that they would lose control over their

funds. The Applicant represents, by law, Free Credit Balances are liabilities of the broker-dealer subject to immediate cash payment to customers on demand. These liabilities are backed by special reserve requirements, which further assure that the cash will be available as needed. Therefore, the IRA holders will continue to control these funds, having the ability to withdraw the cash on demand and to use it to purchase other investments of their choosing.

Similarly, there were comments about the benefits that the Applicant would receive as a result of the change in the cash sweep vehicle, reflected in several of the comments concerned about greater risk and reduced return. Four commenters specifically objected to letting the Applicant keep the interest spread from taking in IRA funds and investing those funds at a higher rate. The Applicant represents that it is true that, in the ordinary conduct of its business, the Applicant is permitted to use customer Free Credit Balances for the purpose of making customer loans, and that these loans would be at a higher interest rate than the Applicant would pay on the Free Credit Balances. Importantly, however, the IRAs would still be receiving market interest rates for small balance demand accounts—at the same or higher rate that the Applicant pays to non-IRA Free Credit Balances—so that they will be treated in a fair and reasonable manner. Furthermore, the Applicant represents that the Applicant will be sacrificing other fees on the money market fund assets as a result of the reduction in the number of shareholder accounts, so that any additional income it may earn may not result in additional profit. One of these commenters added that offering a money market fund, even if not profitable, should be a cost of doing business. However, the Applicant represents that the issue is not one of profitability—it is whether the money market fund is able to achieve market returns for its investors.

Six commenters expressed a preference to continue to place their cash in the money market fund. The Applicant represents that under the terms of the Notice as it would be implemented by the Applicant, they will be able to do so. A current IRA customer will be notified of the Applicant's intention to transfer the IRA's cash to a Free Credit Balance at least 30 days in advance of the effective date of such a change, and will have the ability to request to continue to use the money market fund. New customers will be able to make this request when they enter into the IRA account agreement. Furthermore, customers will be able at any time to request not to have their cash placed in Free Credit Balances. Therefore, IRA holders will not be forced to use Free Credit Balances as their cash sweep vehicle if they object to doing so.

Eight commenters said that there would be no advantage to the IRA holders from switching to Free Credit Balances. However, the Applicant represents that once the minimum balance fee is imposed on the Retirement Shares, the income on the Free Credit Balances would exceed the income in the money market fund for amounts in the Retirement Shares below the minimum balance. For such accounts, there will be an advantage to switching over to Free Credit Balances.

Two commenters appeared to view the Notice as imposing additional burdens specifically on small IRAs, indicating that it would be unfair for that reason. The Applicant represents that these commenters should understand that the minimum balance fee will be imposed on small investments in the Retirement Shares, without regard to the overall size of the IRAs.

One commenter complained that the Notice would permit the Applicant to "arbitrarily" transfer IRA cash balances into Free Credit Balances, with the investor only finding out after the fact. The Applicant represents under the approval requirements under condition (f) above, the Applicant could make the transfer only after advance notice to the IRA holder.

Two commenters complained that making the change to Free Credit Balances would not be consistent with their existing agreements with the Applicant. The Applicant represents that there is nothing in the Applicant's standard form of IRA agreement that would prohibit the use of Free Credit Balances as an IRA's cash sweep vehicle. Furthermore, the change would be disclosed to the IRA holders, and they would have the opportunity to object to the change.

Five commenters indicated that they prefer to permit their cash to accumulate to a certain level, such as $5,000, before investing it, and that the lower interest rate paid by the Free Credit Balances would pressure them to monitor their accounts more closely and either take more frequent distributions or make more frequent investments. If they are forced to make more frequent investments, they said, they would have to pay higher commissions to the Applicant. The Applicant represents that the majority of the Applicant's IRA customers find it prudent to invest cash as it becomes available, as evidenced by the large number of zero-balance accounts in the Retirement share class of the money market fund. Should a customer wish to accumulate cash as described, the accumulation could take place in a Free Credit Balance until the amount reaches the level at which the money market low-balance fee is avoided, and then the cash could be transferred without any commission charge to the money market fund and credited to the customer's account on the next business day. This would not create undue pressure to monitor one's account.

One commenter objected for the reason that there are no alternative ways of handling any funds not immediately invested. The Applicant represents that the Retirement Shares of the money market fund would still be available if the IRA holder decides not to use a Free Credit Balance.

Another commenter did not think there was a problem because interest rates would rise. The Applicant represents that while the problem with low returns on the Retirement Shares is not as serious as it was in 2003 when the Applicant filed its exemption application, due to rising interest rates, there still is an issue of administrative fees for carrying small accounts decreasing returns for the Retirement Shares as compared to the Investment Shares. Furthermore, the problem may recur in the future should interest rates again fall. The Applicant believes it is in the interest of all of its customers to find a more efficient way to handle cash so that those who seek large cash investments can earn competitive rates in the money market fund, while those who keep very small cash amounts can make use of Free Credits Balances as their cash sweep vehicles.

Some of the commenters complained about having lost money from their investments with the Applicant (and in one case, also A.G. Edwards). The Applicant represents that these comments are not relevant to this Notice proceeding.

Four of the commenters requested a hearing, but did not specify any particular issues to be addressed at such a hearing. The Applicant represents that as the issues described above either represent a misunderstanding of the transaction or can be addressed by opting out of use of the Free Credit Balance as the cash sweep vehicle for a particular IRA, there is no need for a hearing. The Department concurs.

The Department also received a written comment submitted by the Applicant. This comment sought

changes to a condition in the Notice, which is discussed below.

The Applicant seeks changes to condition (f) of the Notice. Condition (f) of the Notice reads as follows:

The IRA independent fiduciary approves the transfer of the IRA's available cash into a Free Credit Balance account no less frequently than once every three months, or once every month if there is account activity for the particular month other than the crediting of interest, together with or as a part of the customer's statement of account;

The Applicant raises two issues regarding condition (f). First, the condition does not adequately address the initial approval by the IRA independent fiduciary of the use of free credit balances. Second, it does not permit the approval to take the form of "negative consent."

The Department concurs with the Applicant and has modified condition (f) of the Notice to read as follows:

On the basis of the information disclosed pursuant to paragraph (e) above, the IRA independent fiduciary approves the transfer of the IRA's available cash into a Free Credit Balance account. If the disclosure includes a specified date before which the independent fiduciary must object to the transfer of the IRA's existing cash balances into a Free Credit Balance account, failure of the IRA independent fiduciary to object to the transfer by that date will be deemed an approval by the IRA independent fiduciary of the transfer to and holding of the IRA's available cash in the Free Credit Balance account.

The Applicant provides, with or as part of the customer's statement of account, no less frequently than once every three months, notification that the IRA independent fiduciary may, at any time and without penalty, direct the Applicant in writing to withdraw the IRA's available cash from the Free Credit Balance account. Failure of the IRA independent fiduciary to provide such written direction will be deemed an approval by the IRA independent fiduciary of the transfer to and holding of the IRA's available cash in the Free Credit Balance account.

The Department has considered the entire record and has determined to grant the exemption with the revisions noted herein.

For Further Information Contact: Khalif I. Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Pennsylvania Institute of Neurological Disorders, Inc. Profit Sharing Plan (the Plan) Located in Sunbury, Pennsylvania

[Prohibited Transaction Exemption 2006–02; Application No. D–11306]

Exemption

Based on the facts and representations set forth in the application, the Department is granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of a parcel of unimproved real property known as Lot 20, Section "F", Monroe Manor, Inc., (Lot #20 Kingswood Drive, Selinsgrove, PA 17870) (the Property) to Mahmood Nasir, M.D. (Dr. Nasir), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The Sales price is the greater of $81,000 or the fair market value of the Property as of the date of the Sale;

(c) The fair market value of the Property has been determined by a qualified independent appraiser;

(d) The Sale is a one-time transaction for cash;

(e) The Plan does not pay any commissions, costs, or other expenses in connection with the Sale; and

(f) The Plan fiduciaries will determine, among other things, whether it is in the interest of the Plan to go forward with the Sale of the Property, will review and approve the methodology used in the appraisal that is being relied upon, and will ensure that such methodology is applied by a qualified independent appraiser in determining the fair market value of the Property as of the date of the Sale.

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 December 28, 2005 at 70 FR 76870.

For Further Information Contact: Ms. Blessed Chuksorji of the Department, telephone (202) 693–8567 (this is not a toll-free number).

The Zieger Health Care Corporation Retirement Fund (the Plan) Located in Farmington, Michigan

[Prohibited Transaction Exemption 2006–03 Exemption Application No. D–11313]

Exemption

I. Transactions

The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Employee Retirement Income Security Act (the Act) and the sanctions resulting from the application of section 4975, by reason of sections 4975(c)(1)(A) through (E) of the Internal Revenue Code of 1986 (the Code),[1] shall not apply to:

(a) The in-kind contribution and transfer to the Plan (the In-Kind Contribution) by Zieger Health Care Corporation (ZHCC), acting through its wholly-owned subsidiary, Botsford General Hospital (the Hospital), both of which are parties in interest with respect to the Plan, of the Hospital's right, title, and interest in five (5) limited liability corporations, (collectively, the LLCs or individually, an LLC) where the sole asset of each such LLC is one of five (5) parcels of improved real property situated in southeastern Michigan (individually, an Underlying Property, collectively, the Properties).

(b) The holding by the Plan of ownership interests in the LLCs that own the Properties.

(c) The leaseback by the Plan to the Hospital of the Underlying Property held by each of the LLCs, (individually, a Lease or collectively, the Leases).

(d) The sale of an Underlying Property (or ownership interest in an LLC, as the case may be) by the Plan to ZHCC or its affiliates, pursuant to the right of first offer (the RFO), as described in each Lease, at any time during the term of such Lease.

(e) Any payment or payments to the Plan by the Hospital, pursuant to contingent rent payment(s) (the Contingent Rent Payment(s)), as described in each Lease, during the term of such Lease.[2]

II. Conditions

The exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a) ZHCC contributes to the Plan no less than:

(1) Cash in the amount of $3.3 million in the year 2005;

(2) Cash in the amount of $2 million in each of the years 2006, 2007, and 2008; and

(3) cash in the amount of $3 million in the year 2009.

(b) A qualified, independent fiduciary, as defined in section III(c), below, (the Independent Fiduciary),

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The transactions described in section I(a)–(e), above, collectively, are referred to herein as the Transactions.

acting on behalf of the Plan, determines in accordance with the fiduciary provisions of the Act, whether and on what terms to enter into each of the Transactions.

(c) The Independent Fiduciary represents the Plan's interests for all purposes with respect to each of the Transactions and determines, prior to entering into any of the Transactions, that each such transaction is feasible, in the interest of the Plan, and protective of the Plan and its participants and beneficiaries.

(d) The Independent Fiduciary reviews, negotiates, and approves the specific terms of each of the Transactions.

(e) The Independent Fiduciary monitors compliance by ZHCC and its affiliates, as defined in section III(a), below, with the terms of each of the Transactions and with the conditions of this exemption to ensure that such terms and conditions are at all times satisfied.

(f) The Independent Fiduciary manages the acquisition, holding, leasing, and disposition of the Plan's ownership interests in the LLCs that own the Properties and takes whatever actions are necessary to protect the rights of the Plan with respect the Plan's ownership interests in such LLCs.

(g) The terms and conditions of each of the Transactions are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

(h) The Independent Fiduciary determines the fair market value of the In-Kind Contribution, as of the date such contribution is made. In determining the fair market value of the In-Kind Contribution, the Independent Fiduciary obtains an updated appraisal from an independent, qualified appraiser selected by the Independent Fiduciary and ensures that the appraisal is consistent with sound principles of valuation.

(i) Each Lease has a term of years, commencing on the closing date of the In-Kind Contribution and ending ten (10) years thereafter. Each Lease is a triple net "bondable" lease in which the Hospital's obligation to pay rent to the Plan is absolute and unconditional. The rental payment under each Lease is no less than the fair market rental value of the leased premises, as determined by the Independent Fiduciary, and is net of all costs related to the leased premises, including costs of capital improvements and all other costs to operate, maintain, repair and replace in good condition, and repair the systems and structural and non-structural components of the buildings on the leased premises, including without limitation, the roof, foundation, landscaping, storm water management, utilities, and all other capital and non-capital repairs and replacements, all in a manner befitting office buildings comparable to the buildings on the leased premises and in accordance with all applicable laws. Each Lease contains a commercially reasonable standard for determining whether repair or replacement is necessitated. All such maintenance, repair, and replacement work is the responsibility of the Hospital. As discussed in paragraph number 6 in the Summary of Facts and Representations in the Notice of Proposed Exemption, and except as otherwise provided in each Lease, the Hospital is required to restore the leased premises in the event of casualty or condemnation, regardless of any lack or insufficiency of insurance proceeds or condemnation awards therefore (but subject to all applicable laws);

(j) ZHCC and the Hospital agree to make one or more Contingent Rent Payment(s) to the Plan, if the Plan does not earn an annual return on each of the Properties equal to a fixed interest rate of 8 percent (8%) in any year (the Minimum Funding Rate). Each Contingent Rent Payment is due on the *earliest* of: (1) The end of the ten (10) year term of the Leases, (2) the termination of any of the Leases (including a termination due to default, destruction, or condemnation), or (3) the sale by the Plan of any parcel included in the Properties (or the sale by the Plan of the entity that owns any parcel) (each a Minimum Return Date). If the actual return to the Plan (the Actual Return), as defined in section III(d), below, is less than the sum of the contribution value of the Properties, plus a return on such contribution value equal to the Minimum Funding Rate (the Minimum Return), then ZHCC and the Hospital shall pay to the Plan a Contingent Rental Payment equal to the amount of any such difference. ZHCC and the Hospital shall pay each Contingent Rent Payment to the Plan in cash within 180 days after each Minimum Return Date.

(k) If the Plan desires to sell or convey any of the Properties (or any of the LLCs, as the case may be), during the term of a Lease, the Plan shall first offer the Hospital the right to purchase or otherwise acquire such property or LLC, pursuant to the RFO: (1) On such terms and conditions as the Plan proposes to market such property or such LLC for sale (Soliciting Offer), which terms and conditions shall reflect the Plan's good faith determination of market conditions and the fair market value for such property or LLC, or (2) on such terms and conditions as are contained within an unsolicited *bona fide* offer from an unaffiliated third party that the Plan desires to accept (Unsolicited Offer). The parties shall negotiate in good faith the terms and conditions of any purchase based on a Soliciting Offer for a period of thirty (30) days following the Plan's notice to the Hospital. In all events, the Hospital shall exercise such right to purchase, if at all, upon notice to the Plan within the thirty (30) day period described above with respect to a Soliciting Offer or within thirty (30) days after notice to the Hospital of an Unsolicited Offer. If the Hospital fails to exercise such right to purchase, the Plan is free to sell such property or LLC (*i.e.*, close on the transfer) to a third party on such terms for the next 360 days. However, the Plan shall not have the right to sell to a third party at a lower effective purchase price or on any other materially more favorable term than the effective purchase price and terms proposed by the Plan to the Hospital without first re-offering such property or LLC to the Hospital at such lower effective purchase price or other more favorable term, nor to sell on any terms following the expiration of such 360-day period, without in either event first re-offering such property or LLC to the Hospital. The RFO shall terminate upon the commencement of the exercise by the Plan of its remedies under the Leases as the result of a monetary event of default by the Hospital that continues uncured following notice and the expiration of applicable cure periods (and a second notice and cure period provided fifteen (15) days before the loss of such right on account of such default).

(l) Subject to the Hospital's RFO, the Plan retains the right to sell or assign, in whole or in part, any of its interests in the Properties (or any of its interests in the LLCs, as the case may be) to any third party purchaser.

(m) ZHCC indemnifies the Plan with respect to any liability for hazardous materials released on the Properties, whether such release occurs prior to or after the execution of the Leases or the In-Kind Contribution;

(n) The In-Kind Contribution is conditioned on the Independent Fiduciary's receipt of favorable engineering and environmental reports prior to closing.

(o) The Plan incurs no fees, commissions, or other charges or expenses as a result of its participation in any of the Transactions.

III. Definitions

(a) The term, "affiliate," means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, "Independent Fiduciary," means a fiduciary that:

(1) Has a minimum of five (5) years of experience acting on behalf of employee benefit plans covered by the Act and/or the Code;

(2) Can demonstrate, through experience and/or education, proficiency in matters involving the acquisition, management, leasing, and disposition of real property;

(3) Is an expert with respect to the valuation of real property or has the ability to access (itself or through persons engaged by it) appropriate data regarding the purchase, sale, and leasing of real property located in the relevant market;

(4) Has not engaged in any criminal activity involving fraud, fiduciary standards, or securities law violations;

(5) Is appointed to act on behalf of the Plan for all purposes related to, but not limited to (i) the In-Kind Contribution, (ii) the Leases, (iii) the RFO, (iv) the Contingent Rent Payment(s), and (v) any other transactions between the Plan and ZHCC and its affiliates related to the LLCs and Properties; and

(6) Is independent of and unrelated to ZHCC or its affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to ZHCC and its affiliates if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with ZHCC,

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration in connection with any Transactions described in this exemption; except that an Independent Fiduciary may receive compensation from ZHCC for acting as an Independent Fiduciary 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 decisions, and

(iii) The annual gross revenue received by such fiduciary, during any year of its engagement, from ZHCC and its affiliates exceeds five percent (5%) of the fiduciary's annual gross revenue from all sources for its prior tax year.

(d) The definition of Actual Return to be used in calculating the amount of each Contingent Rent Payment is the sum of: (1) The sales price of any parcel sold, net of selling costs, (2) any net insurance proceeds or net condemnation awards received by the Plan (if any Lease is terminated due to destruction or condemnation), (3) the fair market value of any parcel(s) that the Plan continues to hold, as determined by a three appraiser method (if the parties are unable to otherwise agree), plus (4) the rental income received by the Plan under the Leases prior to the Minimum Return Date, less expenses incurred by the Plan with respect to the Properties and the Leases up to the Minimum Return Date. The liabilities and obligations of the Hospital and ZHCC survive the expiration date of a Lease, or a termination of a Lease, and continue until such liabilities and obligations have been fully paid and fulfilled.

Temporary Nature of Exemption

This exemption is temporary and becomes effective on the date of publication of the grant of the final exemption in the **Federal Register**. The exemption will expire on the date which is ten (10) years from the date of the grant of the exemption. If the Hospital wishes to renew the Leases on the Properties between the Hospital and the LLCs (or between the Hospital and the Plan, as the case may be), the Department would encourage the applicant to submit another application prior to the expiration of this exemption, provided that the Independent Fiduciary determines that the conditions of the renewal are feasible, in the interest and protective of the Plan and the Hospital can demonstrate that it can satisfy the terms of such renewal.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within thirty-seven (37) days of the date of the publication of the Notice in the **Federal Register** on December 28, 2005. All comments and requests for a hearing were due by February 3, 2006.

During the comment period, the Department received no requests for a hearing. However, the Department did receive one comment letter from a commentator and a comment letter from the applicant.

In a facsimile dated February 9, 2006, the commentator provided the Department with a list of six (6) historical events concerning the operations of the Hospital and ZHCC during the 1980's and the early 1990's. In addition to this list, the commentator also expressed concern for the safety of the funding of the Plan. In this regard, the commentator suggested that, if the exemption were granted, the Department "strictly monitor and enforce the financial activities" of the Hospital to ensure the safety of the Plan.

In response, to the concern expressed by the commentator, the applicant submitted a letter dated February 15, 2006, to the Department. In this letter, ZHCC expressed its opinion that adequate measures to protect the Plan and the interests of its participants and beneficiaries already exist under the terms and conditions of the exemption. Specifically, as set forth in the Notice in subsections (b) through (f) and (h) of section II, it is represented that the Retirement Committee for the Plan appointed Fiduciary Counselors, Inc. (FCI) as the Independent Fiduciary, as defined in section III(c) of the Notice, to act on behalf of the Plan with regard to the subject Transactions and to serve as investment manager with authority and discretion over the LLCs and the Properties.

Further, the applicant points out that other safeguards to protect the Plan and its participants and beneficiaries are set forth in the Notice in subsections (g) and (i) through (o) of section II. In this regard, section II(g) requires that the terms and conditions of the Transactions "are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties." Participating in the Transactions will not subject the Plan to fees, commission, or other charges or expenses. Fair market value rental payments, as determined by the Independent Fiduciary are required. The Leases are triple net "bondable" leases having a term of ten (10) years. Under the terms of these Leases, the Hospital bears not only the ordinary maintenance, tax, and insurance expenses, but also is responsible for all capital expenses associated with the Properties. The Plan retains the right to sell or assign the Properties to any third party purchaser, subject to the Hospital's RFO. The Plan and its participants and beneficiaries are further protected by ZHCC's indemnification with respect to any liability for hazardous materials released on the Properties.

The In-Kind Contribution is conditioned on the Independent

Fiduciary receiving favorable engineering and environmental reports on the Properties before closing. Finally, if the Plan does not earn an annual return on each of the Properties equal to a fixed interest rate of 8 percent (8%) in any year, ZHCC and the Hospital have agreed to make one or more Contingent Rent Payment(s), as described in each of the Leases. Accordingly, the applicant believes that adequate safeguards to protect the Plan and its participants and beneficiaries are already in place under the terms of the exemption. In the opinion of the applicant, no additional safeguards are necessary.

In addition to the letter from the commentator, the applicant, in a letter dated February 2, 2006, informed the Department that although the representations in the Notice were accurate, certain representations were made in anticipation of the final exemption for the In-Kind Contribution being granted in calendar year 2005. Accordingly, the applicant updated the following statements to reflect an actual cash contribution in 2005 and the anticipated In-Kind Contribution in calendar year 2006.

The applicant's comments are discussed in the numbered paragraphs below.

1. Section II(a)(1), as set forth in the Notice, at 70 FR 76872, column 2, lines 16–19, requires that ZHCC contribute to the Plan no less than cash in the amount of $3.3 million in the year 2005. In its comment letter, the applicant confirms that in September 2005, ZHCC contributed in cash $4,057,000 to the Plan—$3.3 million of which constituted the contribution negotiated by FCI, the Plan's Independent Fiduciary and which is also required under section II(a)(1), as set forth in the Notice. In this regard, the applicant informed the Department that the entire $4,057,000 cash contribution was in excess of the minimum funding obligations of ZHCC under section 302 of the Act and section 412 of the Code. The applicant also represents that the contribution enabled ZHCC to avoid making a variable rate premium payment to the Pension Benefit Guaranty Corporation.

2. In section 17(q), as set forth in the Notice, at 70 FR 76882, column 2, lines 51–55, it is represented that the In-Kind Contribution plus the additional voluntary cash contributions will exceed the minimum funding requirement for the year 2005. It is anticipated that the In-Kind Contribution will be contributed to the Plan during 2006, once the exemption is finalized. The applicant represents that if the exemption is finalized in time for the In-Kind Contribution to be made to the Plan by September 15, 2006, then the In-Kind Contribution will be applied to the 2005 Plan year for the purpose of the funding rules under section 302 of the Act and section 412 of the Code. Accordingly, the applicant represents that all contributions credited to the Plan for Plan year 2005 will exceed the minimum funding requirement for Plan year 2005.

3. The applicant notified the Department that the name of the Plan Trustee, as set forth in the Notice in paragraph 6 of the Summary of Facts and Representations (the SFR), at 70 FR 76874, column 2, lines 44–60, has changed to LaSalle Bank N.A.—Global Securities and Trust Services. It is represented that this name change is pursuant to the acquisition by LaSalle Bank of Standard Federal Bank. In addition, the applicant clarified that the discretion to invest the assets of the Plan generally resides with the Zieger Health Care Corporation Finance Committee (the Committee) and any investment managers appointed by it. It is further represented that the Committee has granted the Trustee the discretion to manage Plan assets that are invested in funds sponsored by the Trustee.

4. Paragraph 6 of the SFR in the Notice, at 70 FR 76877, column 2, lines 1–4, reads as follows, "Currently, portions of the Kidney Center, the SPO Building and the Medical Center are leased to unrelated third parties." The applicant notes that, as previously stated in the SFR in the Notice, at 70 FR 76874, column 3, lines 48–58, the Botsford Kidney Center building is leased to two (2) parties—a tenant owned by the Hospital and Botsford Kidney Center, Inc. (BKCI). BKCI is a Michigan business corporation owned 80 percent (80%) by individual physicians and 20 percent (20%) by the Hospital.

After giving full consideration to the entire record, including the written comments from the commentator and the applicant, the Department has decided to grant the exemption, as described and clarified, above. In this regard, the comment letters submitted by the commentator and the applicant to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefit Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on December 28, 2005, at 70 FR 76872.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The Donlar Corporation Profit Sharing Plan (the Plan) Located in Roseville, MN

[Prohibited Transaction Exemption 2006–04 Exemption Application No. D–11325]

Exemption

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act (the Act), and the sanctions resulting from the application of section 4975, by reason of section 4975(c)(1)(A) through (E) of the Internal Revenue Code of 1986 (the Code), [3] shall not apply, in connection with the termination of the Plan, to the cash sale of a parcel of improved real property (the Property) owned by the Plan to Mr. Donald A. Kainz (Mr. Kainz), a party in interest with respect to the Plan; provided that:

(a) The Plan receives a price for the sale of the Property to Mr. Kainz equal to the *greater* of:

(1) $418,000; or

(2) The fair market value of the Property, plus the "assemblage value" to Mr. Kainz, as determined by an independent, qualified appraiser, as of the date of such sale; or

(3) The cost to the Plan to acquire and hold the Property;

(b) The Plan incurs no fees, commissions, or other charges or expenses as a result of its participation in the sale of the Property to Mr. Kainz;

(c) Prior to entering into the subject transaction:

(1) With respect to the past use and/or leasing of the Property by the Donlar Corporation (the Employer), the Employer files a Form 5330 with the Internal Revenue Service (IRS);

(2) With respect to the entire period of such use and/or leasing, the Employer pays all appropriate excise taxes, plus interest on such taxes to the IRS; and

(3) With respect to the past use and/or leasing of the Property by the Employer, the Employer pays to the Plan the present value of the fair market rent, including interest, due to the Plan from the Employer in the form of a lump

[3] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

sum total rent payment in arrears with respect to the past use and/or leasing of the Property by the Employer, as determined by Mike Amo (Mr. Amo) an independent, qualified appraiser, for the entire period of such use and/or leasing of the Property by the Employer;

(d) The termination of the Plan and the distribution of its assets is in accordance with the provisions of the Plan and all applicable statutes and regulations, including section 4044 of the Act, relating to the allocation of assets; and

(e) Upon termination of the Plan, each participant in the Plan receives 100 percent (100%) of the balance of his or her account in the Plan in cash, including each participant's *pro rata* share of the value of the Property, as of the date of the sale of the Property to Mr. Kainz.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefit Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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 December 28, 2005, at 70 FR 76882.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Anchorage Area Pipe Trades 367 Joint Apprenticeship Committee (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 2006–05; Exemption Application No. L–11293]

Exemption

The restrictions of sections 406(a) and 406(b)(2) of the Act shall not apply to a loan (the Loan), in the amount of $750,000, to the Plan, to serve as permanent financing for a training facility (the Training Facility) constructed by the Plan, by the Local No. 367 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Local No. 367), a party in interest with respect to the Plan. This exemption is subject to the following conditions:

(a) The Plan does not pay any commissions, fees, or other expenses with respect to this transaction, except certain specified third party closing costs;

(b) An independent, qualified fiduciary (the I/F), after analyzing the terms of the Loan, determines that such Loan is in the best interests of the Plan and its participants and beneficiaries;

(c) In determining the fair market value of the Training Facility, the I/F obtains a current written appraisal report (the Appraisal) from an independent, qualified appraiser, as of the date of the transaction, and ensures that such Appraisal is consistent with sound principles of valuation;

(d) The Loan is for the duration of 15 years at the prime rate, as listed in the *Wall Street Journal*;

(e) Under the terms of the Loan agreement, the Loan is secured by the Training Facility and, in the event of default by the Plan, Local No. 367 has recourse only against such facility and not the general assets of the Plan;

(f) The terms and conditions of the Loan are at least as favorable to the Plan as those that the Plan could have obtained in an arm's length transaction with an unrelated third party; and

(g) The Loan is repaid by the Plan with the funds that the Plan retains after paying all of its operational expenses.

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 3, 2005 at 70 FR 66856.

For Further Information Contact: Ms. Karin Weng of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions 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.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E6–3821 Filed 3–17–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Submitted for Public Comment and Recommendations: Evaluation of the Trade Adjustment Assistance Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506)(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 19, 2006.

ADDRESSES: Send comments to Ms. Charlotte Schifferes, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5637, Washington, DC 20210; (202) 693–3655 (this is not a toll-free number); e-mail: *schifferes.charlotte@dol.gov*; and fax: (202) 693–2766 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Ms. Charlotte Schifferes, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5637, Washington, DC 20210; (202) 693–3655 e-mail: *schifferes.charlotte@dol.gov*; and fax: (202) 693–2766. Copies of this Paperwork Reduction Act Submission Package are at this Web site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration (ETA) is soliciting comments regarding data collection for the impact evaluation of the Trade Adjustment Assistance (TAA) program, reauthorized and amended in 2002. The evaluation, begun in January 2004, was motivated by enactment of new TAA legislation and is part of a planned cycle of evaluations in response to the Program Assessment Rating Tool reviews by the Office of Management and Budget (OMB). The TAA evaluation is intended to generate information that will be useful in responding to programmatic issues and in developing administrative guidance, technical assistance, and legislative or budgetary proposals.

The TAA program provides training, income support, and other reemployment and supportive services to workers who lose their jobs or have their work hours or salary reduced because of increased imports or shifts in production to foreign countries. The Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210) reauthorized the TAA program for five years and amended the prior law in a number of ways. It consolidated TAA and the North American Free Trade Agreement Transitional Adjustment Assistance programs into a single program, broadened eligibility to include secondarily affected workers, and created two new benefits: the Health Coverage Tax Credit (HCTC) and Alternative TAA for eligible workers 50 years old and above. The new law also included provisions to change how the program is administered, such as the requirement that states must ensure that rapid response assistance and appropriate core and intensive services are made available.

The primary focus of the evaluation of the TAA program is to understand how TAA benefits and training services affect the employment and earnings of participants. In order to estimate these net impacts, outcomes of two groups of TAA participants will be compared to outcomes of two statistically matched comparison groups of Unemployment Insurance (UI) recipients. This quasi-experimental approach will require extensive information on demographic and personal characteristics as well as on programmatic experiences of both TAA participants and the comparison group. This information will be gleaned from state TAA and UI administrative records and from baseline and follow-up surveys of individuals in the treatment and comparison groups.

Finally, to understand how various program and administrative practices affect TAA performance, including the various types of collaboration and administrative arrangements through which TAA operates in the One-Stop Career Center system under the Workforce Investment Act (WIA), information will be gleaned from site visits to states and localities and from a survey of all local TAA programs.

Administrative records will be requested from a sample of up to 25 states (randomly selected proportionate to size). These records will include: (1) Rosters of TAA-eligible workers to be used for selecting samples of workers; (2) UI and Trade Readjustment Allowance claims data to measure claims amounts and draw the comparison-group sample; (3) UI wage records to measure pre-separation and post-separation employment and earnings for those in the treatment and comparison groups; and (4) TAA and WIA participant files to measure participant characteristics and service use. The baseline and follow-up surveys will be used to supplement information available from the administrative records by adding information about demographic and household characteristics, reasons for participating (or not participating) in services, services received, training outcomes, methods of job search, and employment history before and after the job separation. The survey will be administered by telephone in 2006 to a randomly selected sample of approximately 10,000 workers, divided between those in the TAA treatment and comparison groups. Smaller but still substantial numbers will be re-interviewed 15 and 30 months after the initial baseline survey.

Six rounds of site visits to states and localities will be conducted during the course of the evaluation, including those for the already completed Initial Implementation Study (that explored implementation of key reform elements in the 2002 legislation). The depth of information from the site visits will be complemented by a breadth of information to be collected from a local survey to be administered in 2006. This local survey will be administered nationwide to local One-Stop Career Centers with substantial TAA activity to elicit information about general issues of TAA operations, including the types of TAA services provided, program integration within the One-Stop system, recruitment efforts for the TAA program, and the timeliness of early-intervention activities, among other issues.

II. Desired Focus of Comments

Currently, ETA is soliciting comments concerning data collection for the five-year TAA evaluation that:

(a) 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;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) 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 submissions of responses.

A copy of material relating to the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice. Items that can be obtained include: (1) The proposed "supporting statement" which describes the purpose, methodology, and respondent burdens of the evaluation, (2) a technical appendix that includes mathematical formulas regarding statistical aspects of the evaluation, (3) instruments for the baseline and follow-up surveys of the comparison and treatment groups, (4) site visit protocols for state and local visits, and (5) the instrument for the survey of local areas.

III. Current Actions

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of the Trade Adjustment Assistance Program.

OMB Number: New.

Affected Public: Individuals eligible for TAA program benefits and services; individuals receiving unemployment insurance: and state and local

administrators of TAA, UI, and WIA programs.

Respondents and Burden Hours: See table below on the data collection activities.

RESPONDENT HOURS BURDEN FOR THE TAA EVALUATION

Activity	Total respondents	Frequency	Average minutes per response	Burden hours
Impact Analysis				
State Administrative Data:				
Requests	25	Thrice	480	600
Baseline Survey	7,965	One time	35	4,646
15-Month Follow-up Survey	5,310	One time	30	2,655
30-Month Follow-up Survey	3,540	One time	30	1,770
Process Analysis				
Administration of Site Visit Protocols:				
State staff (rounds 1 & 3)	150	Twice	120	600
Local area staff (rounds 2, 4, and 5)	600	One time	120	1,200
State staff (round 5)	125	One time	120	250
Total				2,500
Survey of All Local Areas				
State phone screener	50	One time	10	8
Local mail survey	700	One time	20	233

Total Burden Cost for capital and startup: $0. There are no start-up costs; however, states will incur minimal costs associated with providing data files for TAA and UI.

Total Burden Cost for operation and maintenance: $0. There are no on-going costs for operation and maintenance.

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 10, 2006.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E6–3969 Filed 3–17–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–019]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to the Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite JA000, Washington, DC 20546, 202–358–1350, *walter.kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Live is an interactive, educational videoconferencing program. This is an educational resource for educators of grades K–12. This survey will be used with registered educators for feedback to improve this product.

II. Method of Collection

This is an electronic survey that is attached to an e-mail requesting the educator to complete the survey and return survey.

III. Data

Title: NASA Live Survey.

OMB Number: 2700–.

Type of Review: New Collection.

Affected Public: State, Local, or Tribal Government, or Not-for-profit institutions.

Estimated Number of Respondents: 150.

Total Annual Responses: 30.

Estimated Time Per Response: .17 hr.

Estimated Total Annual Burden Hours: 8.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology

Dated: March 13, 2006.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E6–3994 Filed 3–17–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 4, 2006. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *requestschedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

(Note the New Address for Requesting Schedules Using E-Mail):

1. Department of Agriculture, Agricultural Marketing Service (N1–136–05–7, 8 items, 5 temporary items). Inputs, ad hoc reports, sampling data, and electronic mail and word processing copies associated with an electronic information system that serves as a central repository for data on pesticide residues found on agricultural products. Proposed for permanent retention are the master file, annual summary reports, and system documentation.

2. Department of Agriculture, Agricultural Marketing Service (N1–136–06–11, 7 items, 4 temporary items). Inputs, ad hoc and customized reports, and electronic mail and word processing copies associated with an electronic information system that serves as a central repository for data on food-borne pathogens found on agricultural products. Proposed for permanent retention are the master file, annual summary reports, and system documentation.

3. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–17, 6 items, 6 temporary items). Inputs, outputs, master files, system documentation, and electronic mail and word processing copies associated with an electronic information system used to alert the public, industry, and others of a meat or poultry product recall.

4. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–18, 6 items, 4 temporary items). Inputs, outputs, and electronic mail and word processing copies associated with an electronic information system that tracks consumer food complaints reported to the agency. Proposed for permanent retention are the master files and system documentation.

5. Department of Agriculture, Food Safety and Inspection Service (N1–462–05–6, 11 items, 11 temporary items). Inputs, outputs, master files, system documentation, and electronic mail and word processing copies associated with an electronic information system that schedules compliance inspections and stores test results and other related data for statistically-selected samples of imported meat and poultry products.

6. Department of Homeland Security, U.S. Coast Guard (N1–26–05–3, 6 items, 6 temporary items). Cutter training records, including unit training plans, unit copies of individual training records, and documentation and evaluations of routine safety and readiness drills and exercises. Also included are electronic copies of records

created using electronic mail and word processing.

7. Department of Homeland Security, U.S. Coast Guard (N1–26–05–22, 14 items, 14 temporary items). Health and medical records, including x-rays, reports, logs, and forms relating to the administration of medical duties and the treatment of patients. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of Homeland Security, U.S. Coast Guard (N1–26–06–1, 3 items, 3 temporary items). Letters maintained by the Director of the Auxiliary Air Program documenting minor pilot infractions or violations of flight regulations. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of the Interior, Office of the Secretary (N1–48–05–10, 1 item, 1 temporary item). Web versions of agency guidance to bureaus regarding Paperwork Reduction Act information collection requirements. Included are instructions for complying with Office of Management and Budget proposed rulemaking collection requirements.

10. Department of State, Bureau of Educational and Cultural Affairs (N1–59–06–1, 7 items, 4 temporary items). Administrative files documenting routine housekeeping activities and an alumni database of persons who have participated in Bureau-funded educational or cultural programs. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files documenting the foreign policy direction and content of Bureau programming, project and program evaluations, and files relating to projects carried out by overseas posts for Bureau program alumni.

11. Department of State, Bureau of Educational and Cultural Affairs (N1–59–06–2, 7 items, 7 temporary items). Records relating to the review and evaluation of organizations applying for designation as exchange visitor program sponsors. Included are such records as the applications, agreement and denial documentation, program policy files, and reference copies of correspondence. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–24, 3 items, 3 temporary items). Schedules of daily activities, including calendars, appointment books, schedules, logs, diaries, and similar records for senior-ranking Bureau officials. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

13. Department of Transportation, Bureau of Transportation Statistics (N1–570–04–29, 8 items, 6 temporary items). Survey development files, survey questionnaires, and draft and non-published analytical materials. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of final electronic survey database files and system documentation, including final reports relating to specific surveys. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

14. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–05–7, 28 items, 26 temporary items). Records accumulated by the Office of Information Management including, agency-wide correspondence, inputs, outputs, master files, and documentation associated with electronic information systems used to manage and track a variety of forms submitted to the agency, and non-historical motor carrier compliance and publicly available safety data. Also included are electronic copies of records created using electronic mail and word processing, as well as agency Web records containing copies of statistical data relating to public safety programs. Recordkeeping copies of publications produced solely on the web are covered by a previously approved permanent authority. Proposed for permanent retention are historic master data files and related documentation associated with an electronic information system used to collect safety performance and compliance data of motor carriers and hazardous material shippers. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

15. Department of Veteran Affairs, Veterans Health Administration (N1–15–05–2, 8 items, 8 temporary items). Records of the Patient Representation Program, largely consisting of case files relating to veteran health care services complaints. Included are paper and electronic files containing letters of patient complaints and appreciation, summaries of communications with patients, statistical reports summarizing the adequacy of veteran health care services, and related records. Also included are electronic copies of records created using electronic mail and word processing.

16. Environmental Protection Agency (N1–412–06–6, 19 items, 19 temporary items). Grants and other program support agreements, grant appeal file documents, program management files, pilot project files, general correspondence, contract management records, artwork and camera-ready copy, and trip reports, agendas, and evaluations associated with agency-attended and agency-sponsored conferences and seminars. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

17. National Mediation Board (N1–13–05–1, 17 items, 10 temporary items). Mediation and representation case notes of Board members, routine litigation case files, arbitration case files, and resume or roster files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of Board action files, mediation and representation case files, and significant litigation case files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

Dated: March 13, 2006.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E6–3943 Filed 3–17–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting.

Date and Time: May 11–12, 2006, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 595, Stafford II Building, 4121 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: March 15, 2006.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 06–2637 Filed 3–17–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: May 18, 2006, 8 a.m. to 5 p.m. May 19, 2006, 8 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235.

Type of Meeting: Open.

Contact Person: Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8030.

Minutes: May be obtained from the contact person list above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities of the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

Agenda: Staff presentations on program updates; discussions on International Polar Year; discussions on resupply.

Dated: March 14, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–2638 Filed 3–17–06; 8:45am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (the licensee) to withdraw its March 22, 2005, application for proposed amendment to Facility Operating License Nos. DPR–31 and DPR–41 for the Turkey Point Nuclear Plant, Unit Nos. 3 and 4, located in Miami-Dade County, Florida.

The proposed amendment would have revised the Technical Specifications pertaining to the Reactor Protection System functional units. Specifically, the steam/feedwater flow mismatch coincident with steam generator water level—low reactor trip would be deleted, the reactor trip on turbine trip interlock would be changed from P–7 to P–8, and the value of the P–8 interlock setpoint would be changed from 45 percent rated thermal power (RTP) to 40 percent RTP.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 10, 2005 (70 FR 24651). However, by letter dated January 25, 2006, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 22, 2005, and the licensee's letter dated January 25, 2006, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of February 2006.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–3978 Filed 3–17–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

Date: Week of March 13, 2006.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Additional Matters to be Considered

Week of March 13, 2006

Friday, March 17, 2006

9 a.m.—Briefing by Executive Branch (closed—ex. 1).

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

Addition Information: By a vote of 5–0 on March 13 and 14, 2006, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that "Briefing by Executive Branch (closed—ex. 1)" be held March 17, 2006, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or be e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please

contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 14, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–2714 Filed 3–16–06; 2:27 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Interim Staff Guidance Document for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: James Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–6459; fax number: (301) 415–5370; e-mail: *jas4@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) continues to prepare and issue Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analysis, license applications or amendment requests or other related licensing activities for fuel cycle facilities under 10 CFR part 70.

II. Summary

The purpose of this notice is to provide the public an opportunity to review a draft ISG, FCSS–ISG–10, Revision 2, which provides guidance to NRC staff to determine whether the minimum margin of subcriticality is sufficient to provide an adequate assurance of subcriticality for safety to demonstrate compliance with the performance requirements of 10 CFR 70.61(d). Additionally, listing of comments received on the previous draft and the dispositioning of these comments is also provided. These documents are being issued to support a public meeting scheduled for April 28, 2006, at the NRC Headquarters Auditorium in which the NRC will discuss revision of the guidance document and its resolution of comments received on Revision 1. A separate meeting notice will be provided shortly, to give specific details regarding the meeting agenda.

III. Further Information

The documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS ascension numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Interim staff guidance	ADAMS accession No.
Draft FCSS Interim Staff Guidance—10, Revision 2	ML060260479
Comments on Draft FCSS ISG–10, Rev. 1 and Resolution	ML060470150

This document may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 7th day of March 2006.

Melanie A. Galloway,

Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

Draft FCSS Interim Staff Guidance–10, Revision 2

Justification for Minimum Margin of Subcriticality for Safety

Prepared by Division of Fuel Cycle Safety and Safeguards Office of Nuclear Material Safety and Safeguards

Issue

Technical justification for the selection of the minimum margin of subcriticality for safety for fuel cycle facilities, as required by 10 CFR 70.61(d)

Introduction

10 CFR 70.61(d) requires, in part, that licensees or applicants (henceforth to be referred to as "licensees") demonstrate that "under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety." There are a variety of methods that may be used to demonstrate subcriticality, including use of industry standards, handbooks, hand calculations, and computer methods. Subcriticality is assured, in part, by providing margin between actual conditions and expected critical conditions. This interim staff guidance (ISG), however, applies only to margin used in those methods that rely on calculation of k_{eff}, including deterministic and probabilistic computer methods. The use of other methods (e.g., use of endorsed industry standards, widely accepted handbooks, certain hand calculations), containing varying amounts of margin, is outside the scope of this ISG.

For methods relying on calculation of k_{eff}, margin may be provided either in terms of limits on physical parameters of the system (of which k_{eff} is a function), or in terms of limits on k_{eff} directly, or both. For the purposes of this ISG, the term margin of safety will be used to refer to the margin to criticality in terms of system parameters, and the term margin of subcriticality (MoS) will refer to the margin to criticality in terms of k_{eff}. A common approach to ensuring subcriticality is to determine a maximum k_{eff} limit below which the licensee's calculations must fall. This limit will be referred to in this ISG as the *Upper Subcritical Limit* (USL). Licensees using calculational methods perform validation studies, in which critical experiments similar to actual or anticipated facility applications are chosen and then analyzed to determine the bias and uncertainty in the bias. The bias is a measure of the systematic differences between calculational method results and experimental data. The uncertainty in the bias is a measure

of both the accuracy and precision of the calculations and the uncertainty in the experimental data. A USL is then established that includes allowances for bias and bias uncertainty as well as an additional margin, to be referred to in this ISG as the minimum margin of subcriticality (MMS). The MMS is variously referred to in the nuclear industry as *minimum subcritical margin, administrative margin,* and arbitrary margin, and the term MMS should be regarded as synonymous with those terms. The term MMS will be used throughout this ISG, and has been chosen for consistency with the rule. The MMS is an allowance for any unknown (or difficult to identify or quantify) errors or uncertainties in the method of calculating k_{eff} that may exist beyond those which have been accounted for explicitly in calculating the bias and its uncertainty.

There is little guidance in the fuel facility Standard Review Plans (SRPs) as to what constitutes sufficient technical justification for the MMS. NUREG–1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility," Section 5.4.3.4.4, states that there must be margin that includes, among other uncertainties, "adequate allowance for uncertainty in the methodology, data, and bias to assure subcriticality." An important component of this overall margin is the MMS. However, there has been almost no guidance on how to determine an appropriate MMS. Partly due to the lack of historical guidance, and partly due to differences between facilities' processes and methods of calculation, there have been significantly different MMS values approved for the various fuel cycle facilities over time. In addition, the different ways licensees have of defining margins and calculating k_{eff} limits have made a consistent approach to reviewing k_{eff} limits difficult. Recent licensing experience has highlighted the need for further guidance to clarify what constitutes an acceptable justification for the MMS.

The MMS can have a substantial effect on facility operations (e.g., storage capacity, throughput) and there has, therefore, been considerable recent interest in decreasing margin in k_{eff} below what has been licensed previously. In addition, the increasing sophistication of computer codes and the ready availability of computing resources means that there has been a gradual move towards more realistic (often resulting in less conservative) modeling of process systems. The increasing interest in reducing the MMS and the reduction in modeling conservatism make technical justification of the MMS more risk-significant than it has been in the past. In general, consistent with a risk-informed approach to regulation, a smaller MMS requires a more substantial technical justification.

This ISG is only applicable to fuel enrichment and fabrication facilities licensed under 10 CFR part 70.

Discussion

This guidance is applicable to evaluating the MMS in methods of evaluation that rely on calculation of k_{eff}. The k_{eff} value of a fissionable system depends, in general, on a large number of physical variables. The factors that can affect the calculated value of k_{eff} may be broadly divided into the following categories: (1) The geometric configuration; (2) the material composition; and (3) the neutron distribution. The geometric form and material composition of the system—together with the underlying nuclear data (e.g., ν, $\chi(E)$, cross section data)—determine the spatial and energy distribution of neutrons in the system (flux and energy spectrum). An error in the nuclear data or the geometric or material modeling of these systems can produce an error in the neutron flux and energy spectrum, and thus in the calculated value of k_{eff}. The bias associated with a single system is defined as the difference between the calculated and physical values of k_{eff}, by the following equation:

$$\beta = k_{calc} - k_{physical}$$

Thus, determining the bias requires knowing both the calculated and physical k_{eff} values of the system. The bias associated with a single critical experiment can be known with a high degree of confidence, because the physical (experimental) value is known a priori ($k_{physical} \approx 1$). However, for calculations performed to demonstrate subcriticality of facility processes (to be referred to as "applications"), this is not generally the case. The bias associated with such an application (i.e., not a known critical configuration) is not typically known with this same high degree of confidence, because the actual physical k_{eff} of the system is usually not known. In practice, the bias is determined from the average calculated k_{eff} for a set of experiments that cover different aspects of the licensee's applications. The bias and its uncertainty must be estimated by calculating the bias associated with a set of critical experiments having geometric forms, material compositions, and neutron spectra similar to those of the application. Because of the large number of factors that can affect the bias, and the finite number of critical experiments available, staff should recognize that this is only an estimate of the true bias of the system. The experiments analyzed cannot cover all possible combinations of conditions or sources of error that may be present in the applications to be evaluated. The effect on k_{eff} of geometric, material, or spectral differences between critical experiments and applications cannot be known with precision. Therefore, an additional margin (MMS) must be applied to allow for the effects of any unknown uncertainties that may exist in the calculated value of k_{eff} beyond those accounted for in the calculation of the bias and its uncertainty. As the MMS decreases, there needs to be a greater level of assurance that the various sources of bias and uncertainty have been taken into account, and that the bias and uncertainty are known with a high degree of accuracy. In general, the more similar the critical experiments are to the applications, the more confidence there is in the estimate of the bias and the less MMS is needed.

In determining an appropriate MMS, the reviewer should consider the specific conditions and process characteristics present at the facility in question. However, the MMS should not be reduced below 0.02. The nuclear cross sections are not generally known to better than ~ 1–2%. While this does not necessarily translate into a 2% Δk_{eff}, it has been observed over many years of experience with criticality code validation that biases and spreads in the data of a few percent can be expected. As stated in NUREG–1520, MoS should be large compared to the uncertainty in the bias. Moreover, errors in the criticality codes have been discovered over time that have produced k_{eff} differences of roughly this same magnitude of 1–2% (e.g., Information Notice 2005–13, "Potential Non-Conservative Error in Modeling Geometric Regions in the KENO–V.a Criticality Code"). While the possibility of having larger undiscovered errors cannot be entirely discounted, modeling sufficiently similar critical experiments with the same code options to be used in modeling applications should minimize the potential for this to occur. However, many years of experience with the typical distribution of calculated k_{eff} values and with the magnitude of code errors that have occasionally surfaced support establishing 0.02 as the minimum MMS that should be considered acceptable under the best possible conditions.

Staff should recognize the important distinction between ensuring that processes are safe and ensuring that

they are adequately subcritical. The value of k_{eff} is a direct indication of the degree of subcriticality of the system, but is not fully indicative of the degree of safety. A system that is very subcritical (i.e., with $k_{eff} < 1$) may have a small margin of safety if a small change in a process parameter can result in criticality. An example of this would be a UO_2 powder storage vessel, which is subcritical when dry, but may require only the addition of water for criticality. Similarly, a system with a small MoS (i.e., with $k_{eff} \sim 1$) may have a very large margin of safety if it cannot credibly become critical. An example of this would be a natural uranium system in light water, which may have a k_{eff} value close to 1 but will never exceed 1. Because of this, a distinction should be made between the margin of subcriticality and the margin of safety. Although a variety of terms are in use in the nuclear industry, the term margin of subcriticality will be taken to mean the difference between the actual (physical) value of k_{eff} and the value of k_{eff} at which the system is expected to be critical. The term margin of safety will be taken to mean the difference between the actual value of a parameter and the value of the parameter at which the system is expected to be critical. The MMS is intended to account for the degree of confidence that applications calculated to be subcritical will be subcritical. It is not intended to account for other aspects of the process (e.g., safety of the process or the ability to control parameters within certain bounds) that may need to be reviewed as part of an overall licensing review.

There are a variety of different approaches that a licensee could choose in justifying the MMS. Some of these approaches and means of reviewing them are described in the following sections, in no particular preferential order. Many of these approaches consist of qualitative arguments, and therefore there will be some degree of subjectivity in determining the adequacy of the MMS. Because the MMS is an allowance for unknown (or difficult to identify or quantify) errors, the reviewer must ultimately exercise his or her best judgement in determining whether a specific MMS is justified. Thus, the topics listed below should be regarded as factors the reviewer should take into consideration in exercising that judgement, rather than any kind of prescriptive checklist.

The reviewer should also bear in mind that the licensee is not required to use any or all of these approaches, but may choose an approach that is applicable to its facility or a particular process within its facility. While it may be desirable and convenient to have a single k_{eff} limit or MMS value (and single corresponding justification) across an entire facility, it is not necessary for this to be the case. The MMS may be easier to justify for one process than for another, or for a limited application versus generically for the entire facility. The reviewer should expect to see various combinations of these approaches, or entirely different approaches, used, depending on the nature of the licensee's processes and methods of calculation. Any approach used must ultimately lead to a determination that there is adequate assurance of subcriticality.

(1) Conservatism in the Calculational Models

The margin in k_{eff} produced by the licensee's modeling practices, together with the MMS, provide the margin between actual conditions and expected critical conditions. In terms of the subcriticality criterion taken from ANSI/ANS–8.17–2004, "Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors" (as explained in Appendix A):

$MoS \geq \Delta k_m + \Delta k_{sa}$

where Δk_m is the MMS and Δk_{sa} is the margin in k_{eff} due to conservative modeling of the system (i.e., conservative values of system parameters).

Two different applications for which the sums on the right hand side of the equation above are equal to each other are equally subcritical. Assurance of subcriticality may thus be provided by specifying a margin in k_{eff} (Δk_m), or specifying conservative modeling practices (Δk_{sa}), or some combination thereof. This principle will be particularly useful to the reviewer evaluating a proposed reduction in the currently approved MMS; the review of such a reduction should prove straightforward in cases in which the overall combination of modeling conservatism and MMS has not changed. Because of this straightforward quantitative relationship, any modeling conservatism that has not been previously credited should be considered before examining other factors. Cases in which the overall MoS has decreased may still be acceptable, but would have to be justified by other means.

In evaluating justification for the MMS relying on conservatism in the model, the reviewer should consider only that conservatism in excess of any manufacturing tolerances, uncertainties in system parameters, or credible process variations. That is, the conservatism should consist of conservatism beyond the worst-case normal or abnormal conditions, as appropriate, including allowance for any tolerances. Examples of this added conservatism may include assuming optimum concentration in solution processes, neglecting neutron absorbers in structural materials, or assuming minimum reflector conditions (e.g., at least a 1-inch, tight-fitting reflector around process equipment). These technical practices used to perform criticality calculations generally result in conservatism of at least several percent in k_{eff}. To credit this as part of the justification for the MMS, the reviewer should have assurance that the modeling practices described will result in a predictable and dependable amount of conservatism in k_{eff}. In some cases, the conservatism may be process-dependent, in which case it may be relied on as justification for the MMS for a particular process. However, only modeling practices that result in a global conservatism across the entire facility should be relied on as justification for a site-wide MMS. Ensuring predictable and dependable conservatism includes verifying that this conservatism will be maintained over the facility lifetime, such as through the use of license commitments or conditions.

If the licensee has a program that establishes operating limits (to ensure that subcritical limits are not exceeded) below subcritical limits determined in nuclear criticality safety evaluations, the margin provided by this (optional) practice may be credited as part of the conservatism. In such cases, the reviewer should credit only the difference between operating and subcritical limits that exceeds any tolerances or process variation, and should ensure that operating limits will be maintained over the facility lifetime, through the use of license commitments or conditions.

Some questions that the reviewer may ask in evaluating the use of modeling conservatism as justification for the MMS include:

- How much margin in k_{eff} is provided due to conservatism in modeling practices?
- How much of this margin exceeds allowance for tolerances and process variations?
- Is this margin specific to a particular process or does it apply to all facility processes?
- What provides assurance that this margin will be maintained over the facility lifetime?

(2) Validation Methodology and Results

Assurance of subcriticality for methods that rely on the calculation of k_{eff} requires that those methods be appropriately validated. One of the goals of validation is to determine the method's bias and the uncertainty in the bias. After this has been done, an additional margin (MMS) is specified to account for any additional uncertainties that may exist. The appropriate MMS depends, in part, on the degree of confidence in the validation results. Having a high degree of confidence in the bias and bias uncertainty requires both that there be sufficient (for the statistical method used) applicable benchmark-quality experiments and that there be a rigorous validation methodology. Critical experiments that do not rise to the level of benchmark-quality experiments may also be acceptable, but may require additional margin. If either the data or the methodology is deficient, a high degree of confidence in the results cannot be attained, and a larger MMS may need to be employed than would otherwise be acceptable. Therefore, although validation and determining the MMS are separate exercises, they are related. The more confidence one has in the validation results, the less additional margin (MMS) is needed. The less confidence one has in the validation results, the more MMS is needed.

Any review of a licensing action involving the MMS should involve examination of the licensee's validation methodology and results. While there is no clear quantifiable relationship between the validation and MMS (as exists with modeling conservatism), several aspects of validation should be considered before making a qualitative determination of the adequacy of the MMS.

There are four factors that the reviewer should consider in evaluating the validation: (1) The similarity of critical experiments to actual applications; (2) sufficiency of the data (including the number and quality of experiments); (3) adequacy of the validation methodology; and (4) conservatism in the calculation of the bias and its uncertainty. These factors are discussed in more detail below.

Similarity of Critical Experiments

Because the bias and its uncertainty must be estimated based on critical experiments having geometric form, material composition, and neutronic behavior similar to specific applications, the degree of similarity between the critical experiments and applications is a key consideration in determining the appropriateness of the MMS. The more closely critical experiments represent the characteristics of applications being validated, the more confidence the reviewer has in the estimate of the bias and the bias uncertainty for those applications.

The reviewer must understand both the critical experiments and applications in sufficient detail to ascertain the degree of similarity between them. Validation reports generally contain a description of critical experiments (including source references). The reviewer may need to consult these references to understand the physical characteristics of the experiments. In addition, the reviewer may need to consult process descriptions, nuclear criticality safety evaluations, drawings, tables, input files, or other information to understand the physical characteristics of applications. The reviewer must consider the full spectrum of normal and abnormal conditions that may have to be modeled when evaluating the similarity of the critical experiments to applications.

In evaluating the similarity of experiments to applications, the reviewer must recognize that some parameters are more significant than others to accurately calculate k_{eff}. The parameters that have the greatest effect on the calculated k_{eff} of the system are those that are most important to match when choosing critical experiments. Because of this, there is a close relationship between similarity of critical experiments to applications and system sensitivity. Historically, certain parameters have been used to trend the bias because these are the parameters that have been found to have the greatest effect on the bias. These parameters include the moderator-to-fuel ratio (e.g., H/U, H/X, ν^m/ν^f), isotopic abundance (e.g., uranium-235 (^{235}U), plutonium-239 (^{239}Pu), or overall Pu-to-uranium ratio), and parameters that characterize the neutron energy spectrum (e.g., energy of average lethargy causing fission (EALF), average energy group (AEG)). Other parameters, such as material density or overall geometric shape, are generally considered to be of less importance. The reviewer should consider all important system characteristics that can reasonably be expected to affect the bias. For example, the critical experiments should include any materials that can have an appreciable effect on the calculated k_{eff}, so that the effect due to the cross sections of those materials is included in the bias. Furthermore, these materials should have at least the same reactivity worth in the experiments (which may be evidenced by having similar number densities) as in the applications. Otherwise, the effect of any bias from the underlying cross sections or the assumed material composition may be masked in the applications. The materials must be present in a statistically significant number of experiments having similar neutron spectra to the application. Conversely, materials that do not have an appreciable effect on the bias may be neglected and would not have to be represented in the critical experiments.

Merely having critical experiments that are representative of applications is the minimum acceptance criterion, and does not alone justify having any particular value of the MMS. There are some situations, however, in which there is an unusually high degree of similarity between the critical experiments and applications, and in these cases, this fact may be credited as justification for having a smaller MMS than would otherwise be acceptable. If the critical experiments have geometric forms, material compositions, and neutron spectra that are nearly indistinguishable from those of the applications, this may be justification for a smaller MMS than would otherwise be acceptable. For example, justification for having a small MMS for finished fuel assemblies could include selecting critical experiments consisting of fuel assemblies in water, where the fuel has nearly the same pellet diameter, pellet density, cladding materials, pitch, absorber content, enrichment, and neutron energy spectrum as the licensee's fuel. In this case, the validation should be very specific to this type of system, because including other types of critical experiments could mask variations in the bias. Therefore, this type of justification is generally easiest when the area of applicability (AOA) is very narrowly defined. The reviewer should pay particular attention to abnormal conditions. In this example, changes in process conditions such as damage to the fuel or partial flooding may significantly affect the applicability of the critical experiments.

There are several tools available to the reviewer to ascertain the degree of similarity between critical experiments and applications. Some of these are listed below:

1. NUREG/CR–6698, "Guide to Validation of Nuclear Criticality Safety Calculational Method," Table 2.3, contains a set of screening criteria for determining the applicability of critical experiments. As is stated in the NUREG, these criteria were arrived at by

consensus among experienced nuclear criticality safety specialists and may be considered to be conservative. The reviewer should consider agreement on all screening criteria to be justification for demonstrating a very high degree of critical experiment similarity. (Agreement on the most significant screening criteria for a particular system should be considered as demonstration of an acceptable degree of critical experiment similarity.) Less conservative (i.e., broader) screening criteria may also be acceptable, if appropriately justified.

2. Analytical methods that systematically quantify the degree of similarity between a set of critical experiments and applications in pair-wise fashion may be used. One example of this is the TSUNAMI code in the SCALE 5 code package. One strength of TSUNAMI is that it calculates an overall correlation that is a quantitative measure of the degree of similarity between an experiment and an application. Another strength is that this code considers all the nuclear phenomena and underlying cross sections and weights them by their importance to the calculated k_{eff} (*i.e.*, sensitivity of k_{eff} to the data). The NRC staff currently considers a correlation coefficient of $c_k \geq 0.95$ to be indicative of a very high degree of similarity. This is based on the staff's experience comparing the results from TSUNAMI to those from a more traditional screening criterion approach. The NRC staff also considers a correlation coefficient between 0.90 and 0.95 to be indicative of a high degree of similarity. However, owing to the amount of experience with TSUNAMI, in this range use of the code should be supplemented with other methods of evaluating critical experiment similarity. Conversely, a correlation coefficient less than 0.90 should not be used as a demonstration of a high or very high degree of critical experiment similarity. Because of limited use of the code to date, all of these observations should be considered tentative and thus the reviewer should not use TSUNAMI as a "black box," or base conclusions of adequacy solely on its use. However, it may be used to test a licensee's statement that there is a high degree of similarity between experiments and applications.

3. Traditional parametric sensitivity studies may be employed to demonstrate that k_{eff} is highly sensitive or insensitive to a particular parameter. For example, if a 50% reduction in the ^{10}B cross section is needed to produce a 1% change in the system k_{eff}, then it can be concluded that the system is highly insensitive to the boron content, in the amount present. This is because a credible error in the ^{10}B cross section of a few percent will have a statistically insignificant effect on the bias. Therefore, in the amount present, the boron content is not a parameter that is important to match in order to conclude that there is a high degree of similarity between critical experiments and applications.

4. Physical arguments may demonstrate that k_{eff} is highly sensitive or insensitive to a particular parameter. For example, the fact that oxygen and fluorine are almost transparent to thermal neutrons (*i.e.*, cross sections are very low) may justify why experiments consisting of UO_2F_2 may be considered similar to UO_2 or UF_4 applications, provided that both experiments and applications occur in the thermal energy range.

The reviewer should ensure that all parameters which can measurably affect the bias are considered when assessing critical experiment similarity. For example, comparison should not be based solely on agreement in the ^{235}U fission spectrum for systems in which the system k_{eff} is highly sensitive to ^{238}U fission, ^{10}B absorption, or ^{1}H scattering. A method such as TSUNAMI that considers the complete set of reactions and nuclides present can be used to rank the various system sensitivities, and to thus determine whether it is reasonable to rely on the fission spectrum alone in assessing the similarity of critical experiments to applications.

Some questions that the reviewer may ask in evaluating reliance on critical experiment similarity as justification for the MMS include:

- Do the critical experiments adequately span the range of geometric forms, material compositions, and neutron energy spectra expected in applications?
- Are the materials present with at least the same reactivity worth as in applications?
- Do the licensee's criteria for determining whether experiments are sufficiently similar to applications consider all nuclear reactions and nuclides that can have a statistically significant effect on the bias?

Sufficiency of the Data

Another aspect of evaluating the selected critical experiments for a specific MMS is evaluating whether there is a sufficient number of benchmark-quality experiments to determine the bias across the entire AOA. Having a sufficient number of benchmark-quality experiments means that: (1) There are enough (applicable) critical experiments to make a statistically meaningful calculation of the bias and its uncertainty; (2) the experiments somewhat evenly span the entire range of all the important parameters, without gaps requiring extrapolation or wide interpolation; and (3) the experiments are, preferably, benchmark-quality experiments. The number of critical experiments needed is dependent on the statistical method used to analyze the data. For example, some methods require a minimum number of data points to reliably determine whether the data are normally distributed. Merely having a large number of experiments is not sufficient to provide confidence in the validation result, if the experiments are not applicable to the application. The reviewer should particularly examine whether consideration of only the most applicable experiments would result in a larger negative bias (and thus a lower USL) than that determined based on the full set of experiments. The experiments should also ideally be sufficiently well-characterized (including experimental parameters and their uncertainties) to be considered benchmark experiments. They should be drawn from established sources (such as from the International Handbook of Evaluated Criticality Safety Benchmark Experiments (IHECSBE), laboratory reports, or peer-reviewed journals). For some applications, benchmark-quality experiments may not be available; when necessary, critical experiments that do not rise to the level of benchmark-quality experiments may be used. However, the reviewer should take this into consideration and should evaluate the need for additional margin.

Some questions that the reviewer may ask in evaluating the number and quality of critical experiments as justification for the MMS include:

- Are the critical experiments chosen all high-quality benchmarks from reliable (e.g., peer-reviewed and widely-accepted) sources?
- Are the critical experiments chosen taken from multiple independent sources, to minimize the possibility of systematic errors?
- Have the experimental uncertainties associated with the critical experiments been provided and used in calculating the bias and bias uncertainty?
- Is the number and distribution of critical experiments sufficient to establish trends in the bias across the entire range of parameters?
- Is the number of critical experiments commensurate with the statistical methodology being used?

Validation Methodological Rigor

Having a sufficiently rigorous validation methodology means having a methodology that is appropriate for the number and distribution of critical experiments, that calculates the bias and its uncertainty using an established statistical methodology, that accounts for any trends in the bias, and that accounts for all apparent sources of uncertainty in the bias (e.g., the increase in uncertainty due to extrapolating the bias beyond the range covered by the experimental data). Examples of deficiencies in the validation methodology may include: (1) Using a statistical methodology relying on the data being normally distributed about the mean k_{eff} to analyze data that are not normally distributed; (2) using a linear regression fit on data that has a non-linear dependence on a trending parameter; (3) use of a single pooled bias when very different types of critical experiments are being evaluated in the same validation. These deficiencies serve to decrease confidence in the validation results and may warrant additional margin (*i.e.*, a larger MMS). Additional guidance on some of the more commonly observed deficiencies is provided below.

The assumption that data is normally distributed is generally valid, unless there is a strong trend in the data or different types of critical experiments with different mean calculated k_{eff} values are being combined. Tests for normality require a minimum number of critical experiments to attain a specified confidence level (generally 95%). If there is insufficient data to verify that the data are normally distributed, or the data are shown to be not normally distributed, a non-parametric technique should be used to analyze the data.

The critical experiments chosen should ideally provide a continuum of data across the entire validated range, so that any variation in the bias as a function of important system parameters may be observed. The presence of discrete clusters of experiments having a calculated k_{eff} lower than the set of critical experiments as a whole should be examined closely to determine if there is some systematic effect common to a particular type of calculation that makes use of the overall bias non-conservative. Because the bias can vary with system parameters, if the licensee has combined different subsets of data (*e.g.*, solutions and powders, low- and high-enriched, homogeneous and heterogeneous), the bias for the different subsets should be analyzed. In addition, the goodness-of-fit for any function used to trend the bias should be examined to ensure it is appropriate to the data being analyzed.

If critical experiments do not cover the entire range of parameters needed to cover anticipated applications, it may be necessary to extend the AOA by making use of trends in the bias. Any extrapolation (or wide interpolation) of the data should be done by means of an established mathematical methodology that takes into account the functional form of both the bias and its uncertainty. The extrapolation should not be based on judgement alone, such as by observing that the bias is increasing in the extrapolated range, because this may not account for the increase in the bias uncertainty that will occur with increasing extrapolation. The reviewer should independently confirm that the derived bias is valid in the extrapolated range and should ensure that the extrapolation is not large. NUREG/CR–6698 states that critical experiments should be added if the data must be extrapolated more than 10%. There is no corresponding guidance given for interpolation; however, if the gap represents a significant fraction of the total range of the data, then the reviewer should question whether interpolation is reasonable. The reviewer should consider, for instance, how rapidly the underlying physics or neutronic behavior is changing in the vicinity of the gap (*e.g.*, if interpolation in H/X is required, is the system fully thermalized, or is the spectrum changing from a fast-to-thermal spectrum over the gap?) In general, if the extrapolation or interpolation is too large, new factors that could affect the bias may be introduced as the physical phenomena in the system change. The reviewer should not view validation as a purely mathematical exercise, but should bear in mind the neutron physics and underlying physical phenomena when interpreting the results.

Discarding an unusually large number of critical experiments as outliers (*i.e.*, more than 1–2%) should also be viewed with some concern. Apparent outliers should not be discarded based purely upon judgement or statistical grounds (such as causing the data to fail tests for normality), because they could be providing valuable information on the method's validity for a particular application. The reviewer should verify that there are specific defensible reasons, such as reported inconsistencies in the experimental data, for discarding any outliers. If any of the critical experiments from a particular data set are discarded, the reviewer should examine other experiments included to determine whether they may be subject to the same systematic errors. Outliers should be examined carefully especially when they have a lower calculated k_{eff} than the other experiments included.

NUREG–1520 states that the MoS should be large compared to the uncertainty in the bias. The observed spread of the data about the mean k_{eff} should be examined as an indicator of the overall precision of the calculational method. The reviewer should ascertain whether the statistical method of validation considers both the observed spread in the data and the experimental and calculational uncertainty in determining the USL. The reviewer should also evaluate whether the observed spread in the data is consistent with the reported uncertainty (*e.g.*, whether $X^2/N \approx 1$). If the spread in the data is larger than, or comparable to, the MMS, then the reviewer should consider whether additional margin (*i.e.*, a larger MMS) is needed.

As a final test of the code's accuracy, the bias should be relatively small (*i.e.*, bias $\lesssim$ 2 percent), or else the reason for the bias should be determined. No credit should be taken for positive bias, because this would result in making changes in a non-conservative direction without having a clear understanding of those changes. If the absolute value of the bias is very large—and especially if the reason for the large bias cannot be determined—this may indicate that the calculational method is not very accurate, and a larger MMS may be appropriate.

Some questions that the reviewer may ask in evaluating the rigor of the validation methodology as justification for the MMS include:

- Are the results from use of the methodology consistent with the data (*e.g.*, normally distributed)?
- Is the normality of the data confirmed prior to performing statistical calculations? If the data does not pass the tests for normality, is a non-parametric method used?
- Does the assumed functional form of the bias represent a good fit to the critical experiments? Is a goodness-of-fit test performed?
- Does the method determine a pooled bias across disparate types of critical experiments, or does it consider variations in the bias for different types of experiments? Are there discrete clusters of experiments for which the bias appears to be non-conservative?
- Has additional margin been applied to account for extrapolation or wide interpolation? Is this done based on an established mathematical methodology?

• Have critical experiments been discarded as apparent outliers? Is there a valid reason for doing so?

Performing an adequate code validation is not by itself sufficient justification for any specific MMS. The reason for this is that the validation analysis determines the bias and its uncertainty, but not the MMS. The MMS is added after the validation has been performed to provide added assurance of subcriticality. However, having a validation methodology that either exceeds or falls short of accepted practices for validation may be a basis for either reducing or increasing the MMS.

Statistical Conservatism

In addition to having conservatism in k_{eff} due to modeling practices, licensees may also provide conservatism in the statistical methods used to calculate the USL. For example, NUREG/CR–6698 states that an acceptable method for calculating the bias is to use the single-sided tolerance limit approach with a 95/95 confidence (*i.e.*, 95% confidence that 95% of all future critical calculations will lie above the USL). If the licensee decides to use the single-sided tolerance limit approach with a 95/99.9 confidence, this would result in a more conservative USL than with a 95/95 confidence. This would be true of other methods for which the licensee's confidence criteria exceed the minimum accepted criteria. Generally, the NRC has accepted 95% confidence levels for validation results, so using more stringent confidence levels may provide conservatism. In addition, there may be other reasons a larger bias and/or bias uncertainty than necessary has been used (e.g., because of the inclusion of inapplicable critical experiments that have a lower calculated k_{eff}).

The reviewer may credit this conservatism towards having an adequate MoS if: (1) The licensee demonstrates that this translates into a specific δk_{eff}; and (2) the licensee demonstrates that the margin will be dependably present, based on license or other commitments.

(3) Additional Risk-Informed Considerations

Besides modeling conservatism and the validation results, other factors may provide added assurance of subcriticality. These factors should be considered in evaluating whether there is adequate MoS and are discussed below.

System Sensitivity and Uncertainty

The sensitivity of k_{eff} to changes in system parameters can be used to assess the potential effect of errors on the calculation of k_{eff}. If the calculated k_{eff} is especially sensitive to a given parameter, an error in that parameter could have a correspondingly large contribution to the bias. Conversely, if k_{eff} is very insensitive to a given parameter, then an error may have a negligible effect on the bias. This is of particular importance when assessing whether the chosen critical experiments are sufficiently similar to applications to justify a small MMS.

The reviewer should not consider the sensitivity in isolation, but should also consider the magnitude of uncertainties in the parameters. If k_{eff} is very sensitive to a given parameter, but the value of that parameter is known with very high accuracy (and its variations are well-controlled), the potential contribution to the bias may still be very small. Thus, the contribution to the bias is a function of the product of the the k_{eff} sensitivity with the uncertainty. To illustrate this, suppose that k_{eff} is a function of a large number of variables, $x_1, x_2, * * *, x_N$. Then the uncertainty in k_{eff} may be expressed as follows, if all the individual terms are independent:

$$\delta k^2 = \sum_{i=1}^{N} \left(\frac{\partial k}{\partial x_i} \right)^2 \delta x_i^2$$

Where the partial derivatives $\partial k/\partial x_i$ are proportional to the sensitivity and the terms x_1 represent the uncertainties, or likely variations, in the parameters. (If not all variables are dependent, then there may be additional terms.) Each term in this equation then represents the contribution to the overall uncertainty in k_{eff}.

There are several tools available to the reviewer to ascertain the sensitivity of k_{eff} to changes in the underlying parameters. Some of these are listed below:

1. Analytical tools that calculate the sensitivity for each nuclide-reaction pair present in the problem may be used. One example of this is the TSUNAMI code in the SCALE 5 code package. TSUNAMI calculates both an integral sensitivity coefficient (i.e., summed over all energy groups) and a sensitivity profile as a function of energy group. The reviewer should recognize that TSUNAMI only calculates the k_{eff} sensitivity to changes in the underlying nuclear data, and not to other parameters that could affect the bias and should be considered. (See section on Critical Experiment Similarity for caveats about using TSUNAMI.)

2. Direct sensitivity calculations may be used, in which system parameters are perturbed and the resulting impact on k_{eff} determined. Perturbation of atomic number densities can also be used to confirm the sensitivity calculated by other methods (e.g., TSUNAMI). Such techniques are not limited to considering the effect of the nuclear data.

There are also several sources available to the reviewer to ascertain the uncertainty associated with the underlying parameters. For process parameters, these sources of uncertainty may include manufacturing tolerances, quality assurance records, and experimental and/or measurement results. For nuclear data parameters, these sources of uncertainty may include published data, uncertainty data distributed with the cross section libraries, or the covariance data used in methods such as TSUNAMI.

Some systems are inherently more sensitive to changes in the underlying parameters than others. For example, high-enriched uranium systems typically exhibit a greater sensitivity to changes in system parameters (e.g., mass, moderation) than low-enriched systems. This has been the reason that HEU (i.e., >20wt% ^{235}U) facilities have been licensed with larger MMS values than LEU (≤10wt% ^{235}U) facilities. This greater sensitivity would also be true of weapons-grade Pu compared to low-assay mixed oxides (i.e., with a few percent Pu/U). However, it is also true that the uncertainties associated with measurement of the ^{235}U cross sections are much smaller than those associated with measurement of the ^{238}U cross sections. Both the greater sensitivity and smaller uncertainty would need to be considered in evaluating whether a larger MMS is needed for high-enriched systems.

Frequently, operating limits that are more conservative than safety limits determined using k_{eff} calculations are established to prevent those safety limits from being exceeded. For systems in which k_{eff} is very sensitive to the system parameters, more margin between the operating and safety limits may be needed. Systems in which k_{eff} is very sensitive to the process parameters may need both a larger margin between operating and safety limits and a larger MMS. This is because the system is sensitive to any change, whether it be caused by normal process variations or caused by unknown errors. Because of this, the assumption is often made that the MMS is meant to account for variations in the process or the ability to control the process parameters. However, the MMS is meant only to

allow for unknown (or difficult to quantify) uncertainties in the calculation of k_{eff}. The reviewer should recognize that determination of an appropriate MMS is not dependent on the ability to control process parameters within safety limits (although both may depend on the system sensitivity).

Some questions that the reviewer may ask in evaluating the system sensitivity as justification for the MMS include:

- How sensitive is k_{eff} to changes in the underlying nuclear data (e.g., cross sections)?
- How sensitive is k_{eff} to changes in the geometric form and material composition?
- Are the uncertainties associated with these underlying parameters well-known?
- How does the MMS compare to the expected magnitude of changes in k_{eff} resulting from uncertainties in these underlying parameters?

Knowledge of the Neutron Physics

Another important consideration that may affect the appropriate MMS is the extent to which the physical behavior of the system is known. Fissile systems which are known to be subcritical with a high degree of confidence do not require as much MMS as systems where subcriticality is less certain. An example of a system known to be subcritical with high confidence is a light-water reactor fuel assembly. The design of these systems is such that they can only be made critical when highly thermalized. Due to extensive analysis and reactor experience, the flooded isolated assembly is known to be subcritical. In addition, the thermal neutron cross sections for materials in finished reactor fuel have been measured with a very high degree of accuracy (as opposed to cross sections in the resonance region). Other examples of systems in which there is independent corroborating evidence of subcriticality may include systems consisting of very simple geometric shapes, or other idealized situations, in which there is strong evidence that the system is subcritical based on comparison with highly similar systems in published sources (e.g., standards and handbooks). In these cases, the MMS may be significantly reduced due to the fact that the calculation of k_{eff} is not relied on alone to provide assurance of subcriticality.

Reliance on independent knowledge that a given system is subcritical necessarily requires that the configuration of the system be fixed. If the configuration can change from the reference case, there will be less knowledge about the behavior of the changed system. For example, a finished fuel assembly is subject to strict quality assurance checks and would not reach final processing if it were outside specifications. In addition, it has a form that has both been extensively studied and is highly stable. For these reasons, there is a great deal of certainty that this system is well-characterized and is not subject to change. A typical solution or powder system (other than one with a simple geometric arrangement) would not have been studied with the same level of rigor as a finished fuel assembly. Even if they were studied with the same level of rigor, these systems have forms that are subject to change into forms whose neutron physics has not been as extensively studied.

Some questions that the reviewer may ask in evaluating the knowledge of the neutron physics as justification for the MMS include:

- Is the geometric form and material composition of the system fixed and very unlikely to change?
- Is the geometric form and material composition of the system subject to strict quality assurance, such that tolerances have been bounded?
- Has the system been extensively studied in the nuclear industry and shown to be subcritical (e.g., in reactor fuel studies)?
- Are there other reasons besides criticality calculations to conclude that the system will be subcritical (e.g., handbooks, standards, published data)?
- How well-known is the nuclear data (e.g., cross sections) in the energy range of interest?

Likelihood of the Abnormal Condition

Some facilities have been licensed with different sets of k_{eff} limits for normal and abnormal conditions. Separate k_{eff} limits for normal and abnormal conditions are permissible, but are not required. There is some low likelihood that processes calculated to be subcritical will, in fact, be critical, and this likelihood increases as the MMS is reduced (though it cannot in general be quantified). NUREG–1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," states that abnormal conditions should be at least unlikely from the standpoint of the double contingency principle. Then, a somewhat higher likelihood that a system calculated to be subcritical is, in fact, critical is more permissible for abnormal conditions than for normal conditions, because of the low likelihood of the abnormal condition being realized. The reviewer should verify that the licensee has defined abnormal conditions such that achieving the abnormal condition requires at least one contingency to have occurred, that the system will be closely monitored so that it is promptly detected, and that it will be promptly corrected upon detection. Also, there is generally more conservatism present in the abnormal case, because the parameters that are assumed to have failed are analyzed at their worst-case credible condition.

The increased risk associated with having a smaller MMS for abnormal conditions should be commensurate with, and offset by, the low likelihood of achieving the abnormal condition. That is, if the normal case k_{eff} limit is judged to be acceptable, then the abnormal case limit will also be acceptable, provided the increased likelihood (that a system calculated to be subcritical will be critical) is offset by the reduced likelihood of realizing the abnormal condition because of the controls that have been established. Note that if two or more contingencies must occur to reach a given condition, there is no requirement to ensure that the resulting condition is subcritical. If a single k_{eff} limit is used (i.e., no credit for unlikelihood of the abnormal condition), then the limit must be found acceptable to cover both normal and credible abnormal conditions. The reviewer should always make this finding considering specific conditions and controls in the process(es) being evaluated.

(4) Statistical Justification for the MMS

The NRC does not consider statistical justification an appropriate basis for a specific MMS. Previously, some licensees have attempted to justify specific MMS values based on a comparison of two statistical methods. For example, the USLSTATS code issued with the SCALE code package contains two methods for calculating the USL: (1) The Confidence Band with Administrative Margin approach (calculating USL–1), and (2) the Lower Tolerance Band approach (calculating USL–2). The value of the MMS is an input parameter to the Confidence Band approach, but is not included explicitly in the Lower Tolerance Band approach. In this particular justification, adequacy of the MMS is based on a comparison of USL–1 and USL–2 (i.e., the condition that USL–1, including the chosen MMS, is less than USL–2). However, the reviewer should not accept this justification.

The condition that USL–1 (with the chosen MMS) is less than USL–2 is necessary, but is not sufficient, to show that an adequate MMS has been used. These methods are both statistical

methods, and a comparison can only demonstrate whether the MMS is sufficient to bound any statistical uncertainties included in the Lower Tolerance Band approach but not included in the Confidence Band approach. There may be other statistical or systematic errors in calculating k_{eff} that are not included in either statistical treatment. Because of this, an MMS value should be specified regardless of the statistical method used. Therefore, the reviewer should not consider such a statistical approach an acceptable justification for any specific value of the MMS.

(5) Summary

Based on a review of the licensee's justification for its chosen MMS, taking into consideration the aforementioned factors, the staff should make a determination as to whether the chosen MMS provides reasonable assurance of subcriticality under normal and credible abnormal conditions. The staff's review should be risk-informed, in that the review should be commensurate with the MoS and should consider the specific facility and process characteristics, as well as the specific modeling practices used. As an example, approving an MMS value greater than 0.05 for processes typically encountered in enrichment and fuel fabrication facilities should require only a cursory review, provided that an acceptable validation has been performed and modeling practices at least as conservative as those in NUREG–1520 have been utilized. The approval of a smaller MMS will require a somewhat more detailed review, commensurate with the MMS that is requested. However, the MMS should not be reduced below 0.02 due to inherent uncertainties in the cross section data and the magnitude of code errors that have been discovered. Quantitative arguments (such as modeling conservatism) should be used to the extent practical. However, in many instances, the reviewer will need to make a judgement based at least partly on qualitative arguments. The staff should document the basis for finding the chosen MMS value to be acceptable or unacceptable in the Safety Evaluation Report (SER), and should ensure that any factors upon which this determination rests are ensured to be present over the facility lifetime (e.g., through license commitment or condition).

Regulatory Basis

In addition to complying with paragraphs (b) and (c) of this section, the risk of nuclear criticality accidents must be limited by assuring that under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety. [10 CFR 70.61(d)]

Technical Review Guidance

Determination of an adequate MMS is strongly dependent upon specific processes, conditions, and calculational practices at the facility being licensed. Judgement and experience must be employed in evaluating the adequacy of the proposed MMS. In the past, an MMS of 0.05 has generally been found acceptable for most typical low-enriched fuel cycle facilities without a detailed technical justification. A smaller MMS may be acceptable but will require some level of technical review. (No specific guidance on the appropriate MMS for other types of facilities, such as high-enriched or plutonium fuel cycle facilities, is provided. Rather, the MMS for these facilities should be evaluated on a case-by-case basis using the criteria in this ISG; an example of the consideration of sensitivity and uncertainty for high-enriched uranium is given in the section on "System Sensitivity and Uncertainty.") Also, for reasons stated previously, the MMS should not be reduced below 0.02.

An MMS of 0.05 should be found acceptable for low-enriched fuel cycle processes and facilities if:

1. A validation has been performed that meets accepted industry guidelines (e.g., meets the requirements of ANSI/ANS–8.1–1998, NUREG/CR–6361, and/or NUREG/CR–6698).

2. There is an acceptable number of critical experiments with similar geometric forms, material compositions, and neutron energy spectra to applications. These experiments cover the range of parameters of applications, or else margin is provided to account for extensions to the AOA.

3. The processes to be evaluated include materials and process conditions similar to those that occur in low-enriched fuel cycle applications (i.e., no new fissile materials, unusual moderators or absorbers, or technologies new to the industry that can affect the types of systems to be modeled).

The reviewer should consider any factors, including those enumerated in the discussion above, that could result in applying additional margin (*i.e.*, a larger MMS) or may justify reducing the MMS. The reviewer must then exercise judgement in arriving at an MMS that provides for adequate assurance of subcriticality.

Some of the factors that may serve to justify reducing the MMS include:

1. There is a predictable and dependable amount of conservatism in modeling practices, in terms of k_{eff}, that is assured to be maintained (in both normal and abnormal conditions) over the facility lifetime.

2. Critical experiments have nearly identical geometric forms, material compositions, and neutron energy spectra to applications, and the validation is specific to this type of application.

3. The validation methodology substantially exceeds accepted industry guidelines (*e.g.*, it uses a very conservative statistical approach, considers an unusually large number of trending parameters, or analyzes the bias for a large number of subgroups of critical experiments).

4. The system k_{eff} is demonstrably much less sensitive to uncertainties in cross sections or variations in other system parameters than typical low-enriched fuel cycle processes.

5. There is reliable information besides results of calculations that provides assurance that the evaluated applications will be subcritical (*e.g.*, experimental data, historical evidence, industry standards or widely-accepted handbooks).

6. The MMS is only applied to abnormal conditions, which are at least unlikely to be achieved, based on credited controls.

Some of the factors that may necessitate increasing (or not approving) the MMS include:

1. The technical practices employed by the licensee are less conservative than standard industry modeling practices (*e.g.*, do not adequately bound reflection or the full range of credible moderation, do not take geometric tolerances into account).

2. There are few similar critical experiments of benchmark quality that cover the range of parameters of applications.

3. The validation methodology substantially falls below accepted industry guidelines (*e.g.*, it uses less than a 95% confidence in the statistical approach, fails to consider trends in the bias, fails to account for extensions to the AOA).

4. The validation results otherwise tend to cast doubt on the accuracy of the bias and its uncertainty (*i.e.*, the critical experiments are not normally distributed, there is a large number of outliers discarded (≥2%), there are distinct subgroups of experiments with lower k_{eff} than the experiments as a whole, trending fits do not pass goodness-of-fit tests, etc.).

5. The system k_{eff} is demonstrably much more sensitive to uncertainties in cross sections or other system parameters than typical low-enriched fuel cycle processes.

6. There is reliable information that casts doubt on the results of the calculational method or the subcriticality of evaluated applications (*e.g.*, experimental data, reported concerns with the nuclear data).

The purpose of asking the questions in the individual discussion sections is to ascertain the degree to which these factors either provide justification for reducing the MMS or necessitate increasing the MMS. These lists are not all-inclusive, and any other technical information that demonstrates the degree of confidence in the calculational method should be considered.

Recommendation

The guidance in this ISG should supplement the current guidance in the nuclear criticality safety chapters of the fuel facility SRPs (NUREG–1520 and –1718). However, NUREG–1718, Section 6.4.3.3.4, states that the licensee should submit justification for the MMS, but then states that an MMS of 0.05 is "generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible." These two statements are inconsistent. Therefore, NUREG–1718, Section 6.4.3.3.4, should be revised to remove the following sentence:

"A minimum subcritical margin of 0.05 is generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible."

References

ANSI/ANS–8.1–1998, "Nuclear Criticality Safety in Operations with Fissionable Materials Outside Reactors," American Nuclear Society.

ANSI/ANS–8.17–2004, "Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR [Light Water Reactor] Fuel Outside Reactors," American Nuclear Society.

"International Handbook of Evaluated Criticality Safety Experiments," NEA/NSC/DOC (95) 03, Nuclear Energy Agency, Organization for Economic Co-operation and Development, 2003.

IN 2005–13, "Potential Non-Conservative Error in Modeling Geométric Regions in the KENO–V.a Criticality Code," May 17, 2005.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG–1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility." NRC: Washington, DC March 2002.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG–1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility." NRC: Washington, DC August 2000.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG/CR–6698, "Guide for Validation of Nuclear Criticality Safety Calculational Methodology." NRC: Washington, DC January 2001.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG/CR–6361, "Criticality Benchmark Guide for Light-Water-Reactor Fuel in Transportation and Storage Packages." NRC: Washington, DC March 1997.

Approved: _____

Date: _____

Director, Division of Fuel Cycle Safety and Safeguards, NMSS.

Appendix A—ANSI/ANS–8.17 Calculation of Maximum k_{eff}

ANSI/ANS–8.17–2004, "Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors," contains a detailed discussion of the various factors that should be considered in setting k_{eff} limits. This is consistent with, but more detailed than, the discussion in ANSI/ANS–8.1–1998.

The subcriticality criterion from Section 5.1 of ANSI/ANS–8.17–2004 is:

$$K_s \leq k_c - \Delta k_s - \Delta k_c - \Delta k_m$$

Where k_s is the calculated k_{eff} corresponding to the application, Δk_s is its uncertainty, k_c is the mean k_{eff} resulting from the calculation of critical experiments, Δk_c is its uncertainty, and Δk_k is the MMS. The types of uncertainties included in each of these "delta" terms is provided, and includes the following:

Δk_s = (1) statistical uncertainties in computing k_s; (2) convergence uncertainties in computing k_s, (3) material tolerances; (4) fabrication tolerances; (5) uncertainties due to limitations in the geometric representation used in the method; and (6) uncertainties due to limitations in the material representations used in the method.

Δk_c = (7) uncertainties in the critical experiments; (8) statistical uncertainties in computing k_c; (9) convergence uncertainties in computing k_c; (10) uncertainties due to extrapolating k_c outside the range of experimental data; (11) uncertainties due to limitations in the geometric representations used in the method; and (12) uncertainties due to limitations in the material representations used in the method.

Δk_m = an allowance for any additional uncertainties (MMS).

To the extent that not all 12 sources of uncertainty listed above have been explicitly taken into account, they may be allowed for by increasing the value of Δk_m. The more of these sources of uncertainty that have been taken into account, the smaller the necessary additional margin Δk_m. As a general principle, however, the MMS should be large compared to known uncertainties in the nuclear data and limitations of the methodology. However, a value of the MMS below 0.02 should not be used.

Frequently, the terms in the above equation relating to the application are grouped on the left-hand side of the equation, so that the equation is rewritten as follows:

$$K_s + \Delta k_s \leq k_c - \Delta k_c - \Delta k_m$$

Where the terms on the right-hand side of the equation are often lumped together and termed the Upper Subcritical Limit (USL), so that the USL = $k_c - \Delta k_c - \Delta k_m$.

Relation to the Minimum Subcritical Margin (MMS)

The MoS has been defined as the difference between the actual value of k_{eff} and the value of k_{eff} at which the system is expected to be critical. The expected (best estimate) critical value of k_{eff} is the mean k_{eff} value of all critical experiments analyzed (*i.e.*, k_c), including consideration of the uncertainty in the bias (*i.e.*, Δk_c). The calculated value of k_{eff} for an application generally exceeds the actual (physical) k_{eff} value due to conservative assumptions in modeling the system. In terms of the above USL equation, the MoS may be expressed mathematically as:

$$MoS = k_c - \Delta k_c - (k_s - \Delta k_{sa}) - \Delta k_s$$

Where the term in parentheses is equal to the actual (physical) k_{eff} of the application, k_{sa}. A term, Δk_{sa}, has been added to represent the difference between the actual and calculated value of k_{eff} for the application (*i.e.*, Δk_{sa} = change in k_{eff} resulting from modeling conservatism). In terms of the USL:

$$MoS = USL + \Delta k_m - k_s + k_{sa} - \Delta k_s$$

The minimum allowed value of the MoS is reached when the calculated k_{eff} for the application, $k_s + \Delta k_s$, is equal to the USL. When this occurs, the minimum value of the MoS is:

$$MoS \geq \Delta k_m + \Delta k_{sa}$$

Thus, adequate margin (MoS) may be assured either by conservatism in modeling practices or in the explicit specification of Δk_m (MMS). This is discussed in the ISG section on modeling conservatism.

Glossary

Application: calculation of a fissionable system in the facility performed to demonstrate subcriticality under normal or credible abnormal conditions.

Area of Applicability (AOA): the ranges of material compositions and geometric arrangements within which the bias of a calculational method is established.

Benchmark experiment: a critical experiment that has been peer-reviewed and published and is sufficiently well-defined to be used for validation of calculational methods.

Bias: a measure of the systematic differences between calculational method results and experimental data.

Bias uncertainty: a measure of both the accuracy and precision of the calculations and the uncertainty in the experimental data.

Calculational method: includes the hardware platform, operating system, computer algorithms and methods, nuclear reaction data, and methods used to construct computer models.

Critical experiment: a fissionable system that has been experimentally determined to be critical (with $k_{eff} \approx 1$).

Margin of safety: the difference between the actual value of a parameter and the value of the parameter at which the system is expected to be critical with critical defined as $k_{eff} = 1$—bias—bias uncertainty.

Margin of Subcriticality (MoS): the difference between the actual value of k_{eff} and the value of k_{eff} at which the system is expected to be critical with critical defined as $k_{eff} = 1$—bias—bias uncertainty.

Minimum Margin of Subcriticality (MMS): a minimum allowed margin of subcriticality, which is an allowance for any unknown uncertainties in calculating k_{eff}.

Subcritical limit: the maximum allowed value of a controlled parameter under normal case conditions.

Upper Subcritical Limit (USL): the maximum allowed value of k_{eff} (including uncertainty in k_{eff}), under both normal and credible abnormal conditions, including allowance for the bias, the bias uncertainty, and a minimum margin of subcriticality.

[FR Doc. 06–2611 Filed 3–17–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rules 17Ad–6 and 17Ad–7, SEC File No. 270–151, OMB Control No. 3235–0291.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rules 17Ad–6 and 17Ad–7: Recordkeeping Requirements for Transfer Agents

Rule 17Ad–6 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

We estimate that approximately 785 registered transfer agents will spend a total of 392,500 hours per year complying with Rules 17Ad–6 and 17Ad–7. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $19,625,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: March 13, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3981 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03701]

Issuer Delisting; Notice of Application of Avista Corporation To Withdraw Its Common Stock, No Par Value, Together With the Preferred Share Purchase Rights Appurtenant Thereto, From Listing and Registration on the Pacific Exchange, Inc.

March 14, 2006.

On March, 2006, Avista Corporation, a Washington corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value, together with the preferred share purchase rights appurtenant thereto (collectively "Securities"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors ("Board") of the Issuer adopted resolutions on February 10, 2006 to withdraw the Securities from listing and registration on PCX. The Issuer stated that the Board determined the benefits of remaining listed on PCX do not justify the associated expense and administrative burdens. The Issuer stated that the Securities are listed on the New York Stock Exchange, Inc. ("NYSE") and will remain listed on NYSE.

The Issuer stated in its application that it has complied with applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX. The Issuer also stated that withdrawal of the Securities from PCX will not violate any law of the State of Washington, the state in which the Issuer is incorporated.

The Issuer's application relates solely to the withdrawal of the Securities from listing on PCX and shall not affect their continued listing on NYSE or their obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before April 7, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–03701 or;

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE.,Washington, DC 20549–1090.

All submissions should refer to File Number 1–03701. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3986 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27259; File No. 812–13205]

Massachusetts Mutual Life Insurance Company, et al., Notice of Application

March 10, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 ("1940 Act") and an order of exemption pursuant to section 17(b) of the 1940 Act.

APPLICANTS: Massachusetts Mutual Life Insurance Company ("MassMutual"), Massachusetts Mutual Variable Annuity Separate Account 4 ("Separate Account 4"), Panorama Separate Account, C.M. Life Insurance Company ("C.M. Life"), C.M. Multi-Account A, and Panorama Plus Separate Account (together with Separate Account 4, Panorama Separate Account, and C.M. Multi-Account A, the "Separate Accounts") (and, collectively with MassMutual and C.M. Life, the "Applicants"), MML Series Investment Fund and MML Series Investment Fund II (together with the Applicants, the "Section 17 Applicants").

SUMMARY OF APPLICATION: Applicants request an order approving the proposed substitution of shares of American Century VP Income & Growth Fund with MML Income & Growth Fund; American Century VP Value Fund with MML Value Fund; American Funds Asset Allocation Fund (Class 2) and Calvert Social Balanced Portfolio with MML Asset Allocation Fund; American Funds Growth-Income Fund (Class 2) and American Fidelity VIP Growth Opportunities Portfolio (Service Class) with MML Growth & Income Fund; Fidelity VIP Growth Portfolio (Service Class) with MML Diversified Growth Fund; Franklin Small Cap Value Securities Fund with MML Small Cap Value Fund; Janus Aspen Balanced Portfolio (Service Shares and Institutional Shares) with MML Blend Fund; Janus Aspen Forty Portfolio (Service Shares and Institutional Shares) with MML Aggressive Growth Fund; Janus Aspen Worldwide Growth Portfolio (Service Shares and Institutional Shares) with MML Global Fund; MFS Investors Trust Series with MML Enhanced Index Core Equity Fund; MFS New Discovery Series and Scudder VIT Small Cap Index Fund with MML Small Cap Index Fund; T. Rowe Price Blue Chip Growth Portfolio with MML Blue Chip Growth Fund; T. Rowe Price Equity Income Portfolio with MML Equity Income Fund; T. Rowe Price Mid-Cap Growth Portfolio with MML Mid Cap Growth Fund; and Templeton Foreign Securities Fund (Class 2) with MML International Fund (the "Substitutions"). Section 17 Applicants seek an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) of the 1940 Act to the extent necessary to permit MassMutual and C.M. Life to carry out certain of the substitutions.

FILING DATE: The application was filed on June 24, 2005, and an amended and restated application was filed on March 8, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 4, 2006, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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 of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicants, 1295 State Street, Springfield, MA 01111.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

Applicants' and Section 17 Applicants' Representations

1. MassMutual is a mutual life insurance company organized in the Commonwealth of Massachusetts as a corporation and was originally chartered in 1851. MassMutual is a diversified financial services company providing life insurance, annuities, disability income insurance, long-term care insurance, structured settlements, retirement and other products to individual and institutional customers.

2. Separate Account 4 was established in 1997. Separate Account 4 is registered under the 1940 Act as a unit investment trust (File No. 811–08619) and is used to fund variable annuity contracts issued by MassMutual. Six variable annuity contracts funded by Separate Account 4 are affected by the application.

3. Panorama Separate Account was established in 1981. Panorama Separate Account is registered under the 1940 Act as a unit investment trust (File No. 811–03215) and is used to fund variable annuity contracts issued by MassMutual. One variable annuity contract funded by Panorama Separate Account is affected by the application.

4. C.M. Life is a wholly-owned stock life insurance subsidiary of MassMutual. C.M. Multi-Account A was

[4] 17 CFR 200.30–3(a)(1).

established in 1994. C.M. Multi-Account A is registered under the 1940 Act as a unit investment trust (File No. 811–08698) and is used to fund variable annuity contracts issued by C.M. Life. Three variable annuity contracts funded by C.M. Multi-Account A are affected by the application.

5. Panorama Plus Separate Account was established in 1991. Panorama Plus Separate Account is registered under the 1940 Act as a unit investment trust (File No. 811–06530) and is used to fund variable annuity contracts issued by C.M. Life. One variable annuity contract funded by Panorama Plus Separate Account is affected by the application (all eleven variable annuity contracts affected by the application are hereinafter collectively referred to as the "Contracts").

6. MML Series Investment Fund ("MML Fund" is an open-end management investment company having separate investment portfolios. MML Series Investment Fund was organized as a business trust under the laws of The Commonwealth of Massachusetts pursuant to an Agreement and Declaration of Trust dated December 19, 1984, as amended, by MassMutual for the purpose of providing a vehicle for the investment of assets of various separate investment accounts established by MassMutual and its life insurance company subsidiaries, including C.M. Life.

7. MML Series Investment Fund II ("MML Fund II") is an open-end management investment company having separate investment portfolios. MML Series Investment Fund II was organized as a business trust under the laws of The Commonwealth of Massachusetts pursuant to an Agreement and Declaration of Trust dated February 8, 2005, which was amended and restated as of February 28, 2005, for the purpose of providing a vehicle for the investment of assets of various separate investment accounts established by MassMutual and its life insurance company subsidiaries, including C.M. Life.

8. Purchase payments under the Contracts may be allocated to one or more sub-accounts of the Separate Accounts (the "Sub-Accounts"). Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of MassMutual and C.M. Life, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by MassMutual and C.M. Life, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of MassMutual and C.M. Life. Accordingly, all of the assets of each of MassMutual and C.M. Life are available to meet its obligations under the Contracts.

9. Each of the Contracts permits allocations of accumulation value to available Sub-Accounts that invest in specific investment portfolios of underlying registered investment companies (the "Mutual Funds"). Among the available Mutual Funds are portfolios of American Century Variable Portfolios, Inc., American Funds Insurance Series, Calvert Variable Series, Inc., Fidelity Variable Insurance Products Fund, Franklin Templeton Variable Insurance Products Trust, AIM Variable Insurance Funds, Janus Aspen Series, MFS Variable Insurance Trust, MML Series Investment Fund, MML Series Investment Fund II, Oppenheimer Variable Account Funds, Panorama Series Fund, Inc., Scudder Investment VIT Funds, T. Rowe Price Equity Series, Inc., ING Variable Products Trust and PIMCO Variable Insurance Trust. All of these companies are registered under the 1940 Act as open-end management investment companies.

10. Each of the Contracts permits transfers of accumulation value from one Sub-Account to another Sub-Account at any time subject to certain restrictions.

11. Each of the Contracts reserves the right, upon notice to contract owners, to substitute shares of another mutual fund for shares of a mutual fund held by a Sub-Account.

12. The Replaced Funds involved in the Substitutions include 18 separate portfolios representing ten investment company complexes. After the Substitutions, there will be 15 portfolios all of which will be portfolios of MML Fund and MML Fund II. The investment objective and policies of each Replacement Fund will be the same as or substantially similar to the investment objective and policies of the corresponding Replaced Fund.

13. The Substitutions are being proposed to increase the level of fund management responsiveness compared to the current structure, which includes eight unaffiliated investment company complexes. Currently, a majority of the portfolios offered under the contracts consist of unaffiliated investment companies, and changes due to investment performance, style drift, or management practice issues require substantial systems, filing, and printing resources, which slows the process to make changes, if necessary. Because MML Fund, MML Fund II, and MassMutual have "manager of managers" exemptive relief, MassMutual, as investment adviser, will be able to act more quickly and efficiently to protect contract owners' interests if the investment strategy, management team or performance of one or more of the sub-advisers does not meet expectations. From an investment perspective, many of the substitutions will be immaterial because the Replacement Funds will retain as sub-adviser the investment adviser to the Replaced Fund. In this regard, Applicants believe that in no case will a Replacement Fund be more risky than the fund it is replacing. In addition, relieving the Separate Accounts of the administrative burdens of interfacing with ten unaffiliated investment company complexes is expected to simplify compliance, accounting and auditing and, generally, to allow MassMutual and C.M. Life each to administer the Contracts more efficiently.

14. Applicants propose the following substitutions of shares:

Replaced fund	Replacement fund*
1. American Century VP Income & Growth Fund	MML Income & Growth Fund.
2. American Century VP Value Fund	MML Mid Cap Value Fund.
3. American Funds® Asset Allocation Fund (Class 2)	MML Asset Allocation Fund.
Calvert Social Balanced Portfolio.	
4. American Funds® Growth-Income Fund (Class 2)	MML Growth & Income Fund.
Fidelity® VIP Growth Opportunities Portfolio (Service Class).	
5. Fidelity® VIP Growth Portfolio (Service Class)	MML Large Cap Growth Fund.
6. Franklin Small Cap Value Securities Fund	MML Small Cap Value Fund.
7. Janus Aspen Balanced Portfolio (Service Shares and Institutional Shares)	MML Blend Fund.

Replaced fund	Replacement fund*
8. Janus Aspen Forty Portfolio (Service Shares and Institutional Shares)	MML Concentrated Growth Fund (Class I and Class II).
9. Janus Aspen Worldwide Growth Portfolio (Service Shares and Institutional Shares)	MML Global Fund (Class I and Class II).
10. MFS® Investors Trust Series	MML Enhanced Index Core Equity Fund.
11. MFS® New Discovery Series	MML Small Cap Index Fund.
Scudder VIT Small Cap Index Fund.	
12. T. Rowe Price Blue Chip Growth Portfolio	MML Blue Chip Growth Fund.
13. T. Rowe Price Equity Income Portfolio	MML Equity Income Fund.
14. T. Rowe Price Mid-Cap Growth Portfolio	MML Mid Cap Growth Fund.
15. Templeton Foreign Securities Fund (Class 2)	MML Foreign Fund.

*The names of certain MML Funds that will be created prior to the Substitutions are subject to change.

15. For each Replaced Fund and each Replacement Fund, the investment objective, principal risks, investment adviser/sub-adviser, fee structure, expenses for the fiscal year ending in 2005 and assets as of December 31, 2005 are shown in the tables that follow:

	Replaced Fund	Replacement Fund
A. Substitution 1		
Fund Name	American Century VP Income & Growth Fund	MML Income & Growth Fund.
Investment Objective	Seeks growth of capital by investing in common stocks. Income is a secondary objective. The fund pursues a total return and dividend yield that exceed those of the S&P 500® Index by investing in stocks of companies with strong expected returns.	Seeks growth of capital by investing in common stocks. Income is a secondary objective.
Principal Risks	• Market Risk • Company Risk • Price Volatility • Principal Loss	• Market Risk. • Credit Risk. • Management Risk. • Derivative Risk. • Foreign Investment Risk. • Currency Risk. • Leveraging Risk.
Significant Principal Risk Disparities?	The MML Fund Board of Trustees has approved American Century as a sub-adviser for the MML Income and Growth Fund. The fund is expected to be managed in the same style and strategy and by the same team that manages the American Century VP Income and Growth Fund.	
Adviser/Subadviser	American Century Investment Management, Inc	MassMutual/American Century Investment Management, Inc.
Fund Asset Level as of 12/31/05	$800,000,000	N/A.
Mgmt. Fee	0.70%	0.65%.
Mgmt. Fee Schedule	0.70% on 1st $10 billion, 0.65% over $10 billion	0.65% on all assets.
12b–1 Fee.		
Other Expenses	0.00%	0.10%.
Total Annual Operating Expenses	0.70%	0.75%.
Fee Reduction		0.05%.
Net Total Annual Expenses	0.70%	0.70%.*
B. Substitution 2		
Fund Name	American Century VP Value Fund	MML Mid Cap Value Fund.
Investment Objective	Seeks long-term capital growth by investing primarily in common stocks of companies believed to be undervalued at the time of purchase. Income is a secondary objective.	Seeks long-term capital growth by investing primarily in common stocks of companies believed to be undervalued at the time of purchase.
Principal Risks	• Market Risk • Company Risk • Price Volatility • Principal Loss	• Market Risk. • Credit Risk. • Management Risk. • Liquidity Risk. • Derivative Risk. • Foreign Investment Risk. • Currency Risk. • Smaller Company Risk. • Leveraging Risk.
Significant Principal Risk Disparities?	The MML Fund Board of Trustees has approved American Century as a sub-adviser for the MML Value Fund. The fund is expected to be managed in a similar style and strategy and by the same team that manages the American Century VP Income and Growth Fund.	
Adviser/Subadviser	American Century Investment Management, Inc	MassMutual/American Century Investment Management, Inc.
Fund Asset Level as of 12/31/05	$2,950,000,000	N/A.
Mgmt. Fee	0.93%	0.84%.
Mgmt. Fee Schedule	1.00% on 1st $500 million 0.95% on next $500 million 0.90% over $1 billion	0.84% on all assets.

	Replaced Fund	Replacement Fund
12b–1 Fee.		
Other Expenses	0.00%	0.09%.
Total Annual Operating Expenses	0.93%	0.93%.
Fee Reduction		
Net Total Annual Expenses	0.93%	0.93%.*

C. Substitution 3

Fund Name	American Funds Asset Allocation Fund (Class 2)	MML Asset Allocation Fund.
Investment Objective	Seeks to provide high total return (including income and capital gains) consistent with preservation of capital over the long-term by investing in a diversified portfolio of common stocks and other equity securities, bonds and other intermediate and long-term debt securities, and money market instruments (debt securities maturing in one year or less).	Seeks to provide high total return consistent with preservation of capital over the long-term by investing in a diversified portfolio of common stocks and other equity securities, bonds and other intermediate and long-term debt securities, and money market instruments (debt securities maturing in one year or less).
Principal Risks	• Market Risk • Management Risk • Foreign Investment Risk • Credit Risk • Currency Risk • Growth Company Risk • Pre-payment Risk • Political and Economic Risk • Emerging Markets Risk • Interest Rate Risk	• Market Risk. • Management Risk. • Foreign Investment Risk. • Credit Risk. • Currency Risk. • Growth Company Risk. • Pre-payment Risk. • Liquidity Risk. • Derivative Risk. • Emerging Markets Risk. • Leveraging Risk.
Significant Principal Risk Disparities?	The MML Fund Board of Trustees has approved Capital Guardian Trust Company as a sub-adviser for MML Asset Allocation Fund. The fund is expected to be managed in the same style and strategy as the American Funds Asset Allocation Fund.	
Adviser/Subadviser	Capital Research and Management Company	MassMutual/Capital Guardian Trust Company.
Fund Asset Level as of 12/31/05	$6,100,000,000	N/A.
Mgmt. Fee	0.35%	0.55%.
Mgmt. Fee Schedule	0.50% on 1st $600 million 0.42% on $600 million to $1.2 billion 0.36% on $1.2–$2.0 billion 0.32% on $2.0–$3.0 billion 0.28% on $3.0–$5.0 billion 0.26% on $5.0–$8.0 billion 0.250% over $8.0 billion	0.55% on all assets.
12b–1 Fee	0.25%.	
Other Expenses	0.01%	0.09%.
Total Annual Operating Expenses	0.61%	0.64%.
Fee Reduction	0.03%	0.06%.
Net Total Annual Expenses	0.58%	0.58%*.

Fund Name	Calvert Social Balanced Portfolio	MML Asset Allocation Fund.
Investment Objective	Seeks to achieve a competitive total return through an actively managed portfolio of stocks, bonds and money market instruments which offer income and capital growth opportunity and that satisfy the portfolio's investment and social criteria.	Seeks to provide high total return consistent with preservation of capital over the long-term by investing in a diversified portfolio of common stocks and other equity securities, bonds and other intermediate and long-term debt securities, and money market instruments (debt securities maturing in one year or less).
Principal Risks	• Market Risk • Credit Risk • Pre-payment Risk • Liquidity Risk • Currency Risk • Transaction Risk • Correlation Risk • Political Risk • Interest Rate Risk • Information Risk • Opportunity Risk	• Market Risk. • Credit Risk. • Pre-payment Risk. • Liquidity Risk. • Currency Risk. • Management Risk. • Derivative Risk. • Foreign Investment Risk. • Emerging Markets Risk. • Growth Company Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund.

	Replaced Fund	Replacement Fund
Adviser/Subadviser	Calvert Asset Management Company, Inc./Brown Capital Management, Inc. and SSgA Funds Management, Inc.	MassMutual/Capital Guardian Trust Company.
Fund Asset Level as of 12/31/05	$483,000,000	N/A.
Mgmt. Fee	0.70%	0.55%.
Mgmt. Fee Schedule	0.425% on 1st $500 million 0.375% on next $500 million 0.325% over $1 billion	0.55% on all assets.
12b–1 Fee.		
Other Expenses	0.21%	0.09%.
Total Annual Operating Expenses	0.91%	0.64%.
Fee Reduction		0.06%.
Net Total Annual Expenses	0.91%	0.58%.*

D. Substitution 4

Fund Name	American Funds® Growth-Income Fund (Class 2)	MML Growth & Income Fund.
Investment Objective	Seeks capital appreciation and income by investing primarily in common stocks or other securities which demonstrate the potential for appreciation and/or dividends.	Seeks capital appreciation and income by investing primarily in common stocks or other securities which demonstrate the potential for appreciation and/or dividends.
Principal Risks	• Market Risk • Foreign Investment Risk • Growth Company Risk • Emerging Markets Risk • Currency Risk • Management Risk • Credit Risk • Political and Economic Risk	• Market Risk. • Foreign Investment Risk. • Growth Company Risk. • Emerging Markets Risk. • Currency Risk. • Management Risk. • Credit Risk. • Derivative Risk. • Leveraging Risk.
Significant Principal Risk Disparities?	The MML Fund Board of Trustees has approved Capital Guardian Trust Company as a sub-adviser for MML Growth & Income Fund. The fund is expected to be managed in the same style and strategy as the American Fund Growth-Income Fund.	
Adviser/Subadviser	Capital Research and Management Company	MassMutual/Capital Guardian Trust Company.
Fund Asset Level as of 12/31/05	$21,900,000,000	N/A.
Mgmt. Fee	0.28%	0.50%.
Mgmt. Fee Schedule	0.50% on 1st $600 million 0.45% on $600 million to $1.5 billion 0.40% on $1.5–$2.5 billion 0.32% on $2.5–$4.0 billion 0.285% on $4.0–$6.5 billion 0.256% on $6.5–$10.5 billion 0.242% on $10.5–$13.0 billion 0.235% on $13.0–$17.0 billion 0.23% on $17.0–$21.0 billion 0.225% over $21.0 billion	0.50% on all assets.
12b–1 Fee	0.25%.	
Other Expenses	0.02%	0.08%.
Total Annual Operating Expenses	0.55%	0.58%.
Fee Reduction	0.02%	0.05%.
Net Total Annual Expenses	0.53%	0.53%.*
Fund Name	Fidelity® VIP Growth Opportunities Portfolio (Service Class).	MML Growth & Income Fund.
Investment Objective	Seeks to provide capital growth as its investment objective.	Seeks capital appreciation and income by investing primarily in common stocks or other securities which demonstrate the potential for appreciation and/or dividends.
Principal Risks	• Stock Market Volatility • Foreign Exposure • Issuer-Specific Changes	• Market Risk. • Foreign Investment Risk. • Credit Risk. • Management Risk. • Derivative Risk. • Currency Risk. • Emerging Markets Risk. • Growth Company Risk. • Leveraging Risk.

	Replaced Fund	Replacement Fund
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund. Therefore, we do not anticipate any significant risk disparities between the funds.
Adviser/Subadviser	Fidelity Management & Research Company/FMR Co., Inc.	MassMutual/Capital Guardian Trust Company.
Fund Asset Level as of 12/31/05	$200,900,000	N/A.
Mgmt. Fee	0.58%	0.50%.
Mgmt. Fee Schedule	Group Fee Rate + Individual Fund Fee Rate Group Rate as of 12/31/04: 0.2724%	0.50% on all assets. Individual Fund Fee Rate: 0.30%
12b–1 Fee	0.10%.	
Other Expenses	0.14%	0.08%.
Total Annual Operating Expenses	0.82%	0.58%.
Fee Reduction	0.02%	0.05%.
Net Total Annual Expenses	0.80%	0.53%.*

E. Substitution 5

Fund Name	Fidelity® VIP Growth Portfolio (Service Class)	MML Large Cap Growth Fund.
Investment Objective	Seeks to achieve capital appreciation as its investment objective.	Seeks long-term capital appreciation as its investment objective.
Principal Risks	• Stock Market Volatility • Foreign Exposure • "Growth" Investing • Issuer-Specific Changes	• Market Risk. • Foreign Investment Risk. • Growth Company Risk. • Credit Risk. • Management Risk. • Derivative Risk. • Currency Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund.
Adviser/Subadviser	Fidelity Management & Research Company/FMR Co., Inc.	MassMutual/Alliance Capital Management, LP.
Fund Asset Level as of 12/31/05	$1,000,000,000	N/A.
Mgmt. Fee	0.59%	0.65%.
Mgmt. Fee Schedule	Group Fee Rate + Individual Fund Fee Rate Group Rate as of 12/31/04: 0.2724%	0.65% on all assets. Individual Fund Fee Rate: 0.30%
12b–1 Fee	0.10%.	
Other Expenses	0.10%	0.14%.
Total Annual Operating Expenses	0.79%	0.79%.
Fee Reduction	0.03%	0.04%.
Net Total Annual Expenses	0.76%	0.75%.*

F. Substitution 6

Fund Name	Franklin Small Cap Value Securities Fund	MML Small Cap Value Fund.
Investment Objective	Seeks long-term total return. The fund normally invests at least 80% of its net assets in investments of small capitalization companies. For this fund, small cap companies are those with market cap values not exceeding $2.5 billion, at the time of purchase. The fund's manager invests in small companies that it believes are undervalued.	Seeks long-term total return. The fund normally invests at least 80% of its net assets in investments of small capitalization companies.
Principal Risks	• Stocks Risk • Smaller and Mid-Sized Companies • Foreign Seçurities • Value Style Investing • Sector Focus	• Market Risk. • Smaller Company Risk. • Foreign Investment Risk. • Credit Risk. • Management Risk. • Liquidity Risk. • Derivative Risk. • Currency Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund.
Adviser/Subadviser	Franklin Advisory Services, LLC	MassMutual/Goldman Sachs Asset Management, L.P.
Fund Asset Level as of 12/31/05	$1,100,000,000	N/A.
Mgmt. Fee	0.52%	0.75%.

	Replaced Fund	Replacement Fund
Mgmt. Fee Schedule	0.60% on 1st $200 million 0.50% on next $1.1 billion 0.40% over $1.3 billion	0.75% on all assets.
12b–1 Fee	0.25%.	
Other Expenses	0.17%	0.14%.
Total Annual Operating Expenses	0.94%	0.89%.
Fee Reduction	0.05%	0.01%.
Net Total Annual Expenses	0.89%	0.88%.*

G. Substitution 7

Fund Name	Janus Aspen Balanced Portfolio (Service Shares and Institutional Shares).	MML Blend Fund.
Investment Objective	Seeks long-term capital growth consistent with preservation of capital and balanced by current income by normally investing 40–60% of its assets in securities selected primarily for their growth potential and 40–60% of its assets in securities selected primarily for their income potential. The portfolio will normally invest at least 25% of its assets in fixed-income securities.	Seeks to achieve as high a level of total rate of return over an extended period of time as is considered consistent with prudent investment risk and the preservation of capital.
Principal Risks	• Stock Market Risk • Foreign Securities Risks • Derivatives Risk • Non-Investment Grade Bond Risk • Initial Public Offering (IPO) Risk • Small Market Capitalization Risk	• Market Risk. • Foreign Investment Risk. • Derivative Risk. • Credit Risk. • Management Risk. • Pre-Payment Risk. • Liquidity Risk. • Emerging Markets Risk. • Currency Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund.
Adviser/Subadviser	Janus Capital	MassMutual/Babson Capital Management.
Fund Asset Level as of 12/31/05	$2,159,000,000	$921,500,000.
Mgmt. Fee	0.55%	0.39%.
Mgmt. Fee Schedule	0.55% on all assets	0.50% on 1st $100 million. 0.45% on next $200 million. 0.40% on next $200 million. 0.35% over $500 million.

Share Class	Service	Institutional	
12b–1 Fee	0.25%.		
Other Expenses	0.01%	0.01%	0.03%.
Total Annual Operating Expenses	0.81%	0.56%	0.42%.
Fee Reduction			
Net Total Annual Expenses	0.81%	0.56%	0.42%.

	Replaced fund	Replacement fund
H. Substitution 8		
Fund Name	Janus Aspen Forty Portfolio (Service Shares and Institutional Shares).	MML Concentrated Growth Fund.
Investment Objective	Seeks long-term growth of capital. The portfolio invests primarily in common stocks selected for their growth potential.	Seeks long-term growth of capital. The portfolio invests primarily in common stocks selected for their growth potential.
Principal Risks	• Stock Market Risk • Foreign Securities Risks • Derivatives Risk • Non-Investment Grade Bond Risk • Initial Public Offering (IPO) Risk • Small Market Capitalization Risk	• Market Risk. • Foreign Investment Risk. • Derivative Risk. • Credit Risk. • Management Risk. • Pre-Payment Risk. • Liquidity Risk. • Emerging Markets Risk. • Currency Risk. • Leveraging Risk.

	Replaced fund	Replacement fund
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund.
Adviser/Subadviser	Janus Capital	MassMutual/Legg Mason Capital Management, Inc.
Fund Asset Level as of 12/31/05	$1,025,900,000	N/A
Mgmt. Fee	0.64%	0.60%
Mgmt. Fee Schedule	0.64% on all assets	0.60% on all assets.

Share Class	Service	Institutional	Class I*	Class II**
12b–1 Fee	0.25%			
Other Expenses	0.02%	0.02%	0.24%	0.14%
Total Annual Operating Expenses	0.91%	0.66%	0.84%	0.74%
Fee Reduction			0.08%	0.08%
Net Total Annual Expenses	0.91%	0.66%	0.76%***	0.66%***

*Class I shares of the MML Aggressive Growth Fund will replace Service shares of the Janus Aspen Forty Portfolio.
**Class II shares of the MML Aggressive Growth Fund will replace Institutional shares of the Janus Aspen Forty Portfolio.
***Pro Forma.

	Replaced Fund	Replacement Fund
I. Substitution 9		
Fund Name	Janus Aspen Worldwide Growth Portfolio (Service Shares and Institutional Shares).	MML Global Fund.
Investment Objective	Seeks long-term growth of capital in a manner consistent with the preservation of capital by investing primarily in common stocks of companies of any size located throughout the world. The portfolio normally invests in issuers from at least five different countries, including the United States.	Seeks long-term capital appreciation. The fund invests mainly in common stocks of companies in the U.S. and foreign countries. The fund can invest without limit in foreign securities and can invest in any country, including countries with developed or emerging markets.
Principal Risks	• Stock Market Risk • Foreign Securities Risks • Derivatives Risk • Non-Investment Grade Bond Risk • Initial Public Offering (IPO) Risk • Small Market Capitalization Risk	• Market Risk. • Foreign Investment Risk. • Derivative Risk. • Credit Risk. • Management Risk. • Liquidity Risk. • Emerging Markets Risk. • Currency Risk. • Growth Company Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund with no significant risk disparities between the funds.
Adviser/Subadviser	Janus Capital	MassMutual/Neuberger Berman Management Inc.
Fund Asset Level as of 12/31/05	$1,601,200,000	N/A.
Mgmt. Fee	0.60%	0.60%.
Mgmt. Fee Schedule	0.60% on all assets	0.60% on all assets.

Share Class	Service	Institutional	Class I*	Class II**
12b–1 Fee	0.25%			
Other Expenses	0.03%	0.03%	0.28%	0.18%
Total Annual Operating Expenses	0.88%	0.63%	0.88%	0.78%
Fee Reduction			0.15%	0.15%
Net Total Annual Expenses	0.88%	0.63%	0.73%***	0.63%***

*Class I shares of the MML Global Fund will replace Service shares of the Janus Aspen Worldwide Growth Portfolio.
**Class II shares of the MML Global Fund will replace Institutional shares of the Janus Aspen Worldwide Growth Portfolio.
***Pro Forma.

	Replaced fund	Replacement fund
J. Substitution 10		
Fund Name	MFS® Investors Trust Series	MML Enhanced Index Core Equity Fund.

	Replaced fund	Replacement fund
Investment Objective	Seeks long-term growth of capital with a secondary objective to seek reasonable current income. It normally invests at least 65% of its net assets in common stocks and related securities with a focus on companies with larger market capitalizations.	Seeks to outperform the total return performance of its benchmark index, the S&P 500® Index, while maintaining risk characteristics similar to those of the benchmark.
Principal Risks	• Market Risk • Foreign Securities Risk • Company Risk • Large Cap Companies Risk • Over-the-Counter Risk	• Market Risk. • Foreign Investment Risk. • Growth Company Risk. • Credit Risk. • Management Risk. • Derivative Risk. • Currency Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund with no significant risk disparities between the funds.
Adviser/Subadviser	Massachusetts Financial Services Company	MassMutual/Babson Capital Management.
Fund Asset Level as of 12/31/05	$802,400,000	$18,800,000.
Mgmt. Fee	0.75%	0.55%.
Mgmt. Fee Schedule	0.75% on all assets	0.55% on all assets.
12b–1 Fee		
Other Expenses	0.16%	0.26%.
Total Annual Operating Expenses	0.91%	0.81%.
Fee Reduction	0.01%	0.15%.
Net Total Annual Expenses	0.90%	0.66%.

K. Substitution 11

Fund Name	MFS® New Discovery Fund	MML Small Cap Index Fund.
Investment Objective	Seeks capital appreciation. It normally invests 65% of its net assets in equity securities of smaller emerging growth companies.	Seeks to match, as closely as possible, before expenses, the performance of an index identified in the fund's prospectus, which emphasizes stocks of small U.S. companies
Principal Risks	• Market Risk • Emerging Growth Companies Risk • Company Risk • Small Capitalization Companies Risk • Over-the-Counter Risk • Foreign Securities Risk • Short Sales Risk	• Market Risk. • Growth Company Risk. • Credit Risk. • Management Risk. • Liquidity Risk. • Derivative Risk. • Non-Diversification Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund with no significant risk disparities between the funds.
Adviser/Subadviser	Massachusetts Financial Services Company	MassMutual/Northern Trust Investments, Inc.
Fund Asset Level as of 12/31/05	$702,500,000	N/A.
Mgmt. Fee	0.90%	0.35%.
Mgmt. Fee Schedule	0.90% on all assets	0.35% on all assets.
12b–1 Fee.		
Other Expenses	0.17%	0.18%.
Total Annual Operating Expenses	1.07%	0.53%.
Fee Reduction	0.01%	0.08%.
Net Total Annual Expenses	.06%	0.45%*.
Fund Name	Scudder VIT Small Cap Index Fund	MML Small Cap Index Fund.
Investment Objective	Seeks to match, as closely as possible, before expenses, the performance of the Russell 2000® Index, which emphasizes stocks of small U.S. companies.	Seeks to match, as closely as possible, before expenses, the performance of the an index identified in the fund's prospectus, which emphasizes stocks of small U.S. companies
Principal Risks	• Stock Market Risk • Tracking Error Risk • Index Fund Risk • Small Company Capitalization Risk • Futures and Options Risk • Pricing Risk	• Market Risk. • Credit Risk. • Management Risk. • Liquidity Risk. • Derivative Risk. • Non-Diversification Risk.

	Replaced fund	Replacement fund
	• Securities Lending Risk	• Growth Company Risk. • Leveraging Risk.
Significant Principal Risk Disparities?	The MML Fund Board of Trustees has approved Northern Trust as a subadvisor for the MML Small Cap Index Fund. The fund is expected to be managed in the same style and strategy as the Scudder VIT Small Cap Index Fund.	
Adviser/Subadviser	Deutsche Asset Management/Northern Trust Investments, Inc.	MassMutual/Northern Trust Investments, Inc.
Fund Asset Level as of 12/31/05	$449,500,000	N/A.
Mgmt. Fee	0.35%	0.35%.
Mgmt. Fee Schedule	0.35% on all assets	0.35% on all assets.
12b–1 Fee.		
Other Expenses	0.13%	0.18%.
Total Annual Operating Expenses	0.48%	0.53%.
Fee Reduction	0.03%	0.08%.
Net Total Annual Expenses	0.45%	0.45%*.

L. Substitution 12

Fund Name	T. Rowe Price Blue Chip Growth Portfolio	MML Blue Chip Growth Fund.
Investment Objective	Seeks long-term capital growth through investment in common stocks of large and medium-sized blue chip growth companies.	Seeks long-term capital growth through investment in common stocks of large and medium-sized blue chip growth companies
Principal Risks	• Market Risk • Growth Stock Risk • Industry Risk • Company Risk • Smaller Capitalization Company Risk • Growth Style Investing Risk	• Market Risk. • Growth Company Risk. • Credit Risk. • Management Risk. • Derivative Risk. • Foreign Investment Risk. • Currency Risk. • Leveraging Risk.
Significant Principal Risk Disparities?	The MML Fund Board of Trustees has approved T. Rowe Price as a sub-adviser for the MML Blue Chip Growth Fund. The fund is expected to be managed in the same style and strategy and by the same team that manages T. Rowe Price Blue Chip Growth Portfolio.	
Adviser/Subadviser	T. Rowe Price Associates, Inc.	MassMutual/T. Rowe Price Associates, Inc.
Fund Asset Level as of 12/31/05	$91,500,000	N/A.
Mgmt. Fee	0.85%	0.75%.
Mgmt. Fee Schedule	0.85% on all assets	0.75% on all assets.
12b–1 Fee.		
Other Expenses	0.00%	0.23%.
Total Annual Operating Expenses	0.85%	0.98%.
Fee Reduction		0.13%.
Net Total Annual Expenses	0.85%	0.85%*.

M. Substitution 13

Fund Name	T. Rowe Price Equity Income Portfolio	MML Equity Income Fund.
Investment Objective	Seeks substantial dividend income and long-term capital growth through investment in common stocks of established companies.	Seeks dividend income and long-term capital growth through investment in common stocks of established companies
Principal Risks	• Market Risk Foreign Investment Risk • Currency Risk • Growth Stock Risk • Industry Risk • Company Risk • Value Style Investing Risk • Derivatives Risk. • Interest Rate Risk.	• Market Risk. • Foreign Investment Risk. • Currency Risk. • Credit Risk. • Management Risk. • Derivative Risk. • Leveraging Risk.
Significant Principal Risk Disparities?	The MML Fund Board of Trustees has approved T. Rowe Price as a sub-adviser for the MML Equity Income Fund. The fund is expected to be managed in the same style and strategy and by the same team that manages T. Rowe Price Blue Equity Income Portfolio.	
Adviser/Subadviser	T. Rowe Price Associates, Inc.	MassMutual/T. Rowe Price Associates, Inc.
Fund Asset Level as of 12/31/05	$1,400,000,000	N/A.
Mgmt. Fee	0.85%	0.75%.
Mgmt. Fee Schedule	0.85% on all assets	0.75% on all assets.
12b–1 Fee.		
Other Expenses	0.00%	0.10%.
Total Annual Operating Expenses	0.85%	0.85%.
Fee Reduction.		

	Replaced fund	Replacement fund
Net Total Annual Expenses	0.85%	0.85%*.

N. Substitution 14

Fund Name	T. Rowe Price Mid-Cap Growth Portfolio	MML Mid Cap Growth Fund.
Investment Objective	Seeks long-term capital appreciation through investment in stocks of mid-cap companies with potential for above-average earnings growth.	Seeks long-term capital appreciation through investment in stocks of mid-cap companies with potential for above-average earnings growth.
Principal Risks	• Market Risk • Smaller Capitalization Company Risk • Growth Stock Risk • Derivatives Risk • Industry Risk • Company Risk • Foreign Investment Risk • Currency Risk	• Market Risk. • Smaller Company Risk. Growth Company Risk. • Derivative Risk. • Credit Risk. • Management Risk. • Liquidity Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund with no significant risk disparities between the funds.
Adviser/Subadviser	T. Rowe Price Associates, Inc.	MassMutual/T. Rowe Price Associates, Inc.
Fund Asset Level as of 12/31/05	$651,000,000	N/A.
Mgmt. Fee	0.85%	0.77%.
Mgmt. Fee Schedule	0.85% on all assets	0.77% on all assets.
12b–1 Fee.		
Other Expenses	0.00%	0.08%.
Total Annual Operating Expenses	0.85%	0.85%.
Fee Reduction.		
Net Total Annual Expenses	0.85%	0.85%*.

*Pro Forma.

	Replaced Fund	Replacement Fund

O. Substitution 15

Fund Name	Templeton Foreign Securities Fund (Class 2)	MML Foreign Fund.
Investment Objective	Seeks long-term capital growth. The Fund normally invests at least 80% of its net assets in investments of issuers located outside the U.S., including those in emerging markets.	Seeks long-term capital growth. The fund normally invests at least 80% of its net assets in investments of issuers located outside the U.S., including those in emerging markets.
Principal Risks	• Foreign Investment Risk Including: ○ Currency Risk ○ Political and Economic Development Risk ○ Trading Practice Risk ○ Availability of Information ○ Limited Markets Risk ○ Emerging Markets Risk • Stock Specific Risk • Value Style Investment Risk • Sector Focus Risk • Derivatives Securities Risk.	• Foreign Investment Risk. • Emerging Markets Risk. • Currency Risk. • Liquidity Risk. • Market Risk • Credit Risk. • Management Risk. • Derivative Risk. • Growth Company Risk. • Leveraging Risk.
Significant Principal Risk Disparities?		The Replacement Fund is expected to be managed with a similar style and strategy as that of the Replaced Fund with no significant risk disparities between the funds.
Adviser/Subadviser	Templeton Investment Counsel, LLC	MassMutual/Templeton Investment Counsel, LLC
Fund Asset Level as of 12/31/05	$2,800,000,000	N/A.
Mgmt. Fee	0.64%	0.89%*.
Mgmt. Fee Schedule	0.75% on 1st $200 million 0.675% on next $1.1 billion 0.60% over $1.3 billion	0.89% on all assets*.
12b–1 Fee	0.25%.	
Other Expenses	0.19%	0.13%.
Total Annual Operating Expenses	1.08%	1.02%.
Fee Reduction	0.05%.	
Net Total Annual Expenses	1.03%	1.02%**.

*Contractual rate to be in effect as of the date of the Substitution.

** Pro Forma.

16. The Substitutions will take place at MML Fund and MML Fund II's relative net asset values determined on the date of the Substitutions in accordance with section 22 of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Sub-Accounts. Accordingly, there will be no financial impact on any contract owner. The Substitutions will generally be effected by having each of the Sub-Accounts that invests in the Replaced Funds redeem its shares at the net asset value calculated on the date of the Substitutions and purchase shares of the respective Replacement Funds at the net asset value calculated on the same date.

17. Alternatively, a Replaced Fund may redeem the interest "in-kind," for example, if it determines that a cash redemption might adversely affect its shareholders. In that case, the Substitutions will be effected by the Sub-Account contributing all the securities it receives from the Replaced Fund for an amount of Replacement Fund shares equal to the fair market value of the securities contributed. All in-kind redemptions from a Replaced Fund of which any of the Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to *Signature Financial Group, Inc.* (available December 28, 1999). In-kind purchases of shares of a Replacement Fund will be conducted as described herein.

18. The Substitutions were described in a supplement to the prospectuses for the Contracts ("Supplements") filed with the Commission and mailed to contract owners. The Supplements provided contract owners with notice of the Substitutions and described the reasons for engaging in the Substitutions. The Supplements also informed contract owners with assets allocated to a Sub-Account investing in the Replaced Funds that no additional amount may be invested in the Replaced Funds on or after the date of the Substitutions. In addition, the Supplements informed affected contract owners that they will have the opportunity to reallocate account value once:

- Prior to the Substitutions, from each Sub-Account investing in a Replaced Fund, and
- For 30 days after the Substitutions, from each Sub-Account investing in a Replacement Fund to Sub-Account investing in other Mutual Funds available under the respective Contracts, without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitation, other than any applicable limitations in place to deter potentially harmful excessive trading or disintermediation involving the fixed accounts available with the variable annuity contracts.

19. Within five days after a Substitution, MassMutual and C.M. Life will send affected contract owners written confirmation that a Substitution has occurred. The prospectuses for the Contracts, as revised by the Supplements, will reflect the Substitutions. Each contract owner will be provided with a prospectus for the Replacement Funds before the Substitutions, except that with respect to Replacement Funds that become effective contemporaneously with the Substitutions, a prospectus will be sent to affected contract owners with the written confirmation.

20. MassMutual and C.M. Life will pay all expenses and transaction costs of the Substitutions, including all legal, accounting and brokerage expenses relating to the Substitutions. No costs will be borne by contract owners. Affected contract owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitutions will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitutions than before the Substitutions. The Substitutions will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

21. Applicants believe that their request satisfies the standards for relief pursuant to section 26(c) of the 1940 Act, as set forth below, because the affected contract owners will have:

(1) Account values allocated to a Sub-Account invested in a Replacement Fund with an investment objective and policies substantially similar to the investment objective and policies of the Replaced Fund; and

(2) Replacement Funds whose current total annual expenses are equal to or lower than those of the Replaced Funds for their 2005 fiscal year. In addition, as described below, MassMutual and C.M. Life have agreed to, for a period of 24 months following the Substitution, reimburse affected contract owners to the extent the expenses of a Replacement Fund exceed those of the Replaced Fund for the 2005 fiscal year.

Applicants' and Section 17 Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The purpose of section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contract owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. Applicants assert that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. In all cases, the investment objectives and policies of the Replacement Funds are sufficiently similar to those of the corresponding Replaced Funds that contract owners will have reasonable continuity in investment expectations. Accordingly, the Replacement Funds are appropriate investment vehicles for those contract owners who have account values allocated to the Replaced Funds.

5. For the 24 month period following the date of the Substitutions,

MassMutual agrees that if, on the last day of each fiscal quarter during the 24 month period, the total operating expenses of a Replacement Fund (taking into account any expense waiver or reimbursement) exceed on an annualized basis the net expense level of the corresponding Replaced Fund for the 2005 fiscal year, it will, for each Contract outstanding on the date of the Substitutions, make a corresponding reimbursement of Separate Account expenses as of the last day of such fiscal quarter period, such that the amount of the Replacement Fund's net expenses, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Replaced Fund and the expenses of the Separate Account for the 2005 fiscal year.

6. Applicants assert that the Substitutions will not result in the type of costly forced redemption that section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the 1940 Act:

(1) Each of the Replacement Funds is an appropriate fund to which to move contract owners with account values allocated to the Replaced Funds because the new funds have substantially similar investment objectives and policies.

(2) The costs of the Substitutions, including any brokerage costs, will be borne by MassMutual and C.M. Life and will not be borne by contract owners. No charges will be assessed to effect the Substitutions.

(3) The Substitutions will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contract owner's account value.

(4) The Substitutions will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitutions than before the Substitutions and will result in contract owners' account values being moved to a Mutual Fund with the same or lower current total annual expenses.

(5) All contract owners will be given notice of the Substitutions prior to the Substitutions and will have an opportunity for 30 days after a Substitution to reallocate account value among other available Sub-Accounts without diminishing the number of free transfers that may be made in a given contract year and without the imposition of any transfer charge or limitation, other than any applicable limitations in place to deter potentially harmful excessive trading or disintermediation involving the fixed accounts available with the variable annuity contracts.

(6) Within five days after a Substitution, MassMutual and C.M. Life will send to its affected contract owners written confirmation that a Substitution has occurred.

(7) The Substitutions will in no way alter the insurance benefits to contract owners or the contractual obligations of MassMutual and C.M. Life.

(8) The Substitutions will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

7. The section 17 Applicants request an order under section 17(b) exempting them from the provisions of section 17(a) to the extent necessary to permit MassMutual and C.M. Life to carry out each of the proposed substitutions. Sections 17(a)(1) and (2) of the 1940 Act prohibit an affiliated person of a registered investment company, or affiliated persons of any such affiliated person, or any principal underwriter for such company (collectively, "Transaction Affiliates") from selling a security to, or purchasing a security from, the registered investment company. Applicants may be deemed to be Transaction Affiliates of one another based upon the definition of "affiliated person" under section 2(a)(3) of the 1940 Act. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between Transaction Affiliates.

8. Section 17(b) provides that the Commission may grant an application exempting proposed transactions from the prohibitions of section 17(a) if the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; the transaction is consistent with the investment policies of each registered investment company concerned; and the transaction is consistent with the general purposes of the 1940 Act. Applicants state that the consideration to be paid by the Replacement Fund, and each of the Substituted Funds, will be fair and reasonable and will not involve overreaching. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any contract owner's account value or death benefit or in the dollar value of his or her investment in any Sub-Account.

9. In addition, Applicants state that to the extent the Substitutions are effected by redeeming shares of the Substituted Funds and using the redemption proceeds to purchase shares of the Replacement Funds, the Substitutions will satisfy each of the procedural safeguards adopted by the Board of Directors responsible for each of the Ameritas Portfolios and the Substituted Funds, respectively under Rule 17a–7 under the 1940 Act.

Conclusions

1. Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act approving the Substitutions. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in section 26(c) and should, therefore, be granted.

2. The Section 17 Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting the Separate Accounts, MassMutual, C.M. Life, and each Replacement Fund from the provisions of section 17(a) of the 1940 Act to the extent necessary to permit, as part of the substitutions, the in-kind purchase of shares of the Replacement Funds which may be deemed to be prohibited by section 17(a) of the 1940 Act. The Section 17 Applicants represent that the proposed in-kind transactions meet all of the requirements of section 17(b) of the 1940 Act and that an exemption should be granted, to the extent necessary, from the provisions of section 17(a).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. 06–2598 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27260; 812–13055]

Tactical Allocation Services, LLC and Agile Funds, Inc.; Notice of Application

March 13, 2006.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Tactical Allocation Services, LLC (the "Adviser") and Agile Funds, Inc. (the "Company").

FILING DATES: The application was filed on December 19, 2003, and amended on February 27, 2006. Applicants have agreed to file a final amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 7, 2006, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 4909 Pearl East Circle, Suite 300, Boulder, CO 80301.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Company currently offers shares of one series, the Agile Multi-Strategy Fund (the "Multi-Strategy Fund," included in the term "Fund," defined below), and may establish additional series, each consisting of separate investment objectives, policies, and restrictions (each, a "Fund" and collectively, the "Funds"). The Adviser, a Colorado limited liability corporation, serves as the investment adviser to the Multi-Strategy Fund and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").[1]

2. The Adviser serves as investment adviser to the Multi-Strategy Fund pursuant to an investment advisory agreement between the Company and the Adviser (the "Advisory Agreement") that was approved by the Company's board of directors ("Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Company or the Adviser ("Independent Directors"), and the Multi-Strategy Fund's initial shareholders. The Advisory Agreement permits the Adviser to enter into investment advisory agreements ("Subadvisory Agreements") with subadvisers ("Subadvisers") to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Subadviser is, and any future Subadviser will be, registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Subadvisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Subadvisers out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Subadviser"). None of the current Subadvisers is an Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

4. Applicants note that the Commission adopted certain fund governance standards on July 27, 2004.[2] Applicants agree that each Fund will comply with the fund governance standards set forth in rule 0–1(a)(7)

[1] The applicants request that any relief granted pursuant to the application apply to future series of the Company and any other existing or future registered open-end management investment company and its series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with the application; and (c) comply with the terms and conditions in the application (included in the term "Funds"). The Company is the only existing registered open-end management investment company that currently intends to rely on the order. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

[2] See Investment Company Act Release No. 26520 (July 27, 2004).

under the Act by the compliance date. Applicants also note that the Commission has proposed rule 15a–5 under the Act and agree that the requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.[3]

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. Each Fund will comply with the fund governance standards set forth in rule 0–1(a)(7) under the Act by the compliance date for the rule ("Compliance Date"). Prior to the Compliance Date, a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of a new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be contained in a proxy statement. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of a new Subadviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) Set the Fund's overall investment strategies; (b) evaluate, select, and recommend Subadvisers to manage all or part of the Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objectives, policies and restrictions.

8. No director or officer of the Company, or director, manager or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director, manager or officer), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–3958 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

[3] Investment Company Act Release No. 26230 (Oct. 23, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53474; File No. SR–NASD–2006–022]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Optional Routing of Orders in Nasdaq's INET Facility

March 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2006, the National Association of Securities Dealers, Inc.("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] which renders it effective upon filing with the Commission. On March 9, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to create a new voluntary routing option for its INET facility that will allow INET users to instruct that orders being ultimately directed to the New York Stock Exchange or the American Stock Exchange first check INET and then the Nasdaq Market Center and/or Nasdaq's Brut facility for potential execution before being delivered to those exchanges. Nasdaq will implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is in *italics;* deletions are in [brackets].[5]

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] Amendment No. 1 made a non-substantive, clarifying change to the rule text, as well as provided rationale for the request for the Commission to accelerate the operative delay.

[5] Changes are marked to the rule text that appears in the electronic NASD Manual found at *www.nasd.com.* Prior to the date when The NASDAQ Stock Market LLC ("NASDAQ LLC") commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC

Continued

4956. Routing

(a) INET Order Routing Process

(1) The INET Order Routing Process shall be available to Participants from 7 a.m. to 8 p.m. Eastern Time, and shall route orders as described below:

(A) Exchange-Listed Routing Options

The System provides [five] *six* routing options for orders in exchange-listed securities. Of these [five] *six*, only [two] *three*—DOT Immediate, [and] DOT Alternative *and DOT Nasdaq*—are available for orders ultimately sought to be directed to either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"). The System also allows firms to send individual orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX. The [five] *six* System routing options for NYSE and/or Amex listed orders are:

(i)–(v) No Change.

(vi) DOT Nasdaq ("DOTN")—under this option, after checking the INET System for available shares, orders are sent to other available market centers that are owned by Nasdaq, including the Nasdaq Market Center and/or Nasdaq's Brut Facility for potential execution before the destination exchange. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center as designated by the entering party. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.

(B)–(C) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to create a new voluntary routing option for its INET facility that will allow INET users to instruct that orders being ultimately directed to the New York Stock Exchange or the American Stock Exchange first check INET and then the Nasdaq Market Center and/or Nasdaq's Brut facility for potential execution before being delivered to those exchanges. Nasdaq believes that the above option will enhance the choices available to INET systems users to select the best method to execute proprietary and customer orders across multiple trading venues, and is similar to routing options available through Nasdaq's Brut facility. In addition, this routing option will allow users to maximize their participation across Nasdaq-owned trading venues so as to take advantage of available volume-based execution fee discounts resulting from activity on all Nasdaq systems. Like all Nasdaq system routing options, applicable principles of best-execution apply to the use of this proposed routing option.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with Section 15A of the Act,[6] in general, and furthers the objectives of Section 15A(b)(6) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission. Nasdaq has requested that the Commission waive 30-day delayed operational date provisions contained in the above rule, based upon a representation that the proposed rule filing would benefit investors and permit them to select the execution venues that best suit their trading goals, and should, therefore, be provided to investors as soon as possible. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

approved in Securities Exchange Act Release No. 53128 (January 13, 2006).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] The effective date of the original proposed rule change is February 10, 2006 and the effective date of Amendment No. 1 is March 9, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 9, 2006, the date on which Nasdaq submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–022. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–022 and should be submitted on or before April 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3959 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53469; File No. SR–PCX–2006–10]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Trade Shredding

March 10, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comment 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 Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc., proposes to amend its rules governing the NYSE Arca Marketplace, the equities trading facility of the NYSE Arca Equities, Inc. With this filing, the Exchange proposes to amend its rules to prohibit the practice of splitting orders into multiple smaller orders for any purpose other than seeking the best execution of the entire order. The text of the proposed rule change appears below. Additions are *in italics*.

Rules of NYSE Arca Equities, Inc.

Rule 6 Business Conduct

Prohibited Acts

Rule 6.2 Any ETP Holder or any associated person thereof found guilty in accordance with the Rules and procedures of the Corporation of any of the following prohibited acts shall be subject to the imposition of penalties in accordance with the Rules of the Corporation.

* * * * *

(g) An ETP Holder may not split any order into multiple smaller orders for any purpose other than seeking the best execution of the entire order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NYSE Arca Equities Rule 6 (Business Conduct) to prohibit trade shredding. More specifically, the Exchange is proposing to add language to its existing rules to prohibit Equity Trading Permit Holders ("ETP Holders") from splitting large orders into multiple smaller orders for any purpose other than best execution.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Exchange filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect the recent acquisition of PCX by Archipelago Holdings, Inc. ("Archipelago") and the merger of the NYSE with Archipelago. *See* File No. SR–PCX–2006–24. All references herein have been changed to reflect the aforementioned rule change.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–PCX–2006–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2006–10. 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 the filing also will be available for inspection and copying at the principal offices of NYSE Arca, Inc. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2006–10 and should be submitted on or before April 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3984 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53476; File No. SR–PCX–2006–14]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change To Reduce the Fee Charged to a Lead Market Maker When It Transfers Options Issues to Another Lead Market Maker

March 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2006, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. 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 Exchange is proposing to modify its rate schedule retroactive to September 26, 2005 to allow for the Exchange to reduce the fee it charges a Lead Market Maker ("LMM") when it transfers options issues to another LMM. The text of the proposed rule change is available on the Exchange's Web site, *http://www.archipelago.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to reduce the fee that the PCX charges an LMM, when the LMM transfers an allocated options issue to another LMM. The PCX presently charges an LMM a $1000 fee, per issue, in the event that the LMM transfers the issue to another LMM, in accordance with the PCX allocation procedures. The $1000 per issue fee is subject to a cap when multiple issues are included as part of the same transfer. Under this proposal, the new fee will be $100 per issue transferred. The new lower fee will not be subject to a rate cap when multiple issues are transferred.

On September 26, 2005, Archipelago Holdings Inc. acquired the PCX. After reviewing fees and charges, new management has determined that for business purposes certain fees should be changed. The $1000 fee that the PCX previously assessed LMMs was originally established to offset the cost associated with issue transfers. At this time, the PCX is willing to absorb most of the costs associated with issue transfers, and the PCX has determined that the proposed $100 per issue transfer fee is warranted. The Exchange proposes to make this fee effective retroactive to September 26, 2005, which coincides with the date that Archipelago Holdings Inc. acquired the Exchange. The PCX will review all transfers that have occurred or may occur from September 26, 2005 through the effective date of this proposal and will make any fee adjustments that are

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

deemed warranted pursuant to the proposed rate schedule contained in this filing.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)[3] of the Act, in general, and Section 6(b)(4)[4] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2006–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2006–14. 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 PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2006–14 and should be submitted on or before April 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3985 Filed 3–17–06; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10424]

Idaho Disaster #ID–00003

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Idaho (FEMA–1630–DR), dated 02/27/2006.

Incident: Severe Storms and Flooding.

Incident Period: 12/30/2005 through 01/04/2006.

Effective Date: 02/27/2006.

Physical Loan Application Deadline Date: 04/28/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/27/2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Owyhee

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10424.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–3953 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10205 and #10206]

Louisiana Disaster Number LA–00004

AGENCY: Small Business Administration.

ACTION: Amendment 11.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1607–DR), dated 09/24/2005.

Incident: Hurricane Rita.

Incident Period: 09/23/2005 through 11/01/2005.

Effective Date: 03/10/2006.

Physical Loan Application Deadline Date: 04/10/2006.

EIDL Loan Application Deadline Date: 06/26/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Louisiana, dated 09/24/2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 04/10/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–3996 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10176 and #10177]

Louisiana Disaster Number LA–00002

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1603–DR), dated 08/29/2005.

Incident: Hurricane Katrina.

Incident Period: 08/29/2005 through 11/01/2005.

Effective Date: 03/10/2006.

Physical Loan Application Deadline Date: 04/10/2006.

EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Louisiana, dated 08/29/2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 04/10/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–4001 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10178 and #10179]

Mississippi Disaster Number MS–00005

AGENCY: Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1604–DR), dated 08/29/2005.

Incident: Hurricane Katrina.

Incident Period: 08/29/2005 through 10/14/2005.

Effective Date: 03/10/2006.

Physical Loan Application Deadline Date: 04/10/2006.

EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Mississippi, dated 08/29/2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 04/10/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–3999 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10203 and #10204]

Texas Disaster Number TX–00066

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1606–DR), dated 09/24/2005.

Incident: Hurricane Rita.

Incident Period: 09/23/2005 through 10/14/2005.

Effective Date: 03/10/2006.

Physical Loan Application Deadline Date: 04/10/2006.

EIDL Loan Application Deadline Date: 06/26/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 09/24/2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 04/10/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–3997 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting on Wednesday, April 12, 2006, starting at 10 a.m. eastern standard time. The meeting will take place at the First Niagara Bank, 6950 S. Transit Road, Lockport, New York. The purpose of the meeting is to provide advice and opinions regarding the effectiveness of and need for SBA Programs, particularly within the local districts, with members present, and staff of the U.S. Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, Buffalo District Office, in writing by

letter or fax no later than Friday, March 31, 2006 in order to be put on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, Niagara Center, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716).551–4301 or fax (716) 551–4418; *Franklin.Sciortino@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–3952 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 1—Maine District Advisory Council; Public Meeting

The U.S. Small Business Administration Maine District Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting on Wednesday, March 22, 2006, starting at 10 a.m. The meeting will be held at the Care & Comfort, 180 Main Street, Waterville, Maine. The purpose of the meeting is to discuss advice and opinions regarding the effectiveness of and the need for SBA programs, particularly within the local districts which members represent.

Any member of the public wishing to attend must contact Mary McAleney, District Director, Maine District Office, U.S. Small Business Administration, 68 Sewall Street, Room 512, Augusta, Maine 04330, phone (207) 622–8386; fax (207)–622–8277; *Mary.McAleney@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–3955 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region V Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Wednesday, March 29, 2006, at 9 a.m. The meeting will take place at the Hamilton County Business Center, 1776 Mentor Avenue, Cincinnati, OH to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Ronald Carlson, in writing or by fax, in order to be put on the agenda. Ronald Carlson, Branch Manager, SBA, Cincinnati Branch Office, 550 Main Street, Room 2–522, Cincinnati, OH 45202, phone (513) 684–2814, Ext. 205, fax (515) 684–3251, e-mail: *Ronald.carlson@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Sincerely,

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–3950 Filed 3–17–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5324]

Renewal of the Charter of the United States International Telecommunication Advisory Committee

Summary: The Charter of the United States International Telecommunication Advisory Committee (ITAC) has been renewed for an additional two years.

ITAC is established under the general authority of the Secretary of State and the Department of State as set forth in Title 22, sections 2656 and 2707, of the United States Code. The purpose of the ITAC is to advise the Department of State with respect to, and provide strategic planning recommendations on, telecommunication and information policy matters related to the United States' participation in the work of the International Telecommunication Union, the Permanent Consultative Committees of the Organization of American States Inter-American Telecommunication Commission, the Organization for Economic Cooperation and Development, and other international bodies addressing telecommunications. ITAC provides advice on matters of U.S. policy and preparation of positions for meetings of international and regional organizations pertaining to telecommunication and information issues.

Anne D. Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. E6–3976 Filed 3–17–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5348]

Bureau of International Security and Nonproliferation; Extension of Waiver of Missile Proliferation Sanctions Against Chinese Government Activities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made to extend the waiver of import sanctions against certain activities of the Chinese government that was announced on September 19, 2003, pursuant to the Arms Export Control Act, as amended.

EFFECTIVE DATE: March 18, 2006.

FOR FURTHER INFORMATION CONTACT: Pam Durham, Office of Missile Threat Reduction, Bureau of International Security and Nonproliferation, Department of State (202–647–4931).

SUPPLEMENTARY INFORMATION: A determination was made on September 14, 2005, pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it was essential to the national security of the United States to waive for a period of six months the import sanction described in Section 73(a)(2)(C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(C)) against the activities of the Chinese government described in section 74(a)(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(a)(8)(B))—*i.e.*, activities of the Chinese government relating to the development or production of any missile equipment or technology and activities of the Chinese government affecting the development or production of electronics, space systems or equipment, and military aircraft (see **Federal Register** Vol 68, No. 182, Friday, Sept. 19, 2003). This action was effective on September 18, 2005.

On March 13, 2006, a determination was made pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it is essential to the national security of the United States to extend the waiver period for an additional six months, effective from the date of expiration of the previous waiver (March 18, 2006).

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: March 14, 2006.

Stephen G. Rademaker,

Acting Assistant Secretary of State for International Security and Nonproliferation Department of State.

[FR Doc. E6–3977 Filed 3–17–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5347]

Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Operated and Maintained on the Border of the United States

AGENCY: Department of State.

ACTION: Notice.

Notice is hereby given that the Department of State has received an application from PMC (Nova Scotia) Company ("PMC Nova Scotia") for itself, and on behalf of Plains Marketing Canada L.P. (both Canadian companies), for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to operate and maintain a pipeline crossing the U.S.-Canada border at a point near Raymond, Montana. In 1972, the Department originally issued a permit to construct, operate and maintain this oil pipeline to Wascana Pipe Line Incorporated. According to the PMC Nova Scotia application, Wascana Pipe Line Ltd. was dissolved in 1999 and its assets distributed to the Murphy Oil Company Ltd. These assets, including the Wascana River pipeline, were subsequently acquired from Murphy Oil Company Ltd. in May, 2001 by PMC Nova Scotia, for itself and on behalf of Plains Marketing Canada, L.P. Therefore, PMC Nova Scotia for itself, and on behalf of Plains Marketing Canada L.P., seeks a new Presidential permit reflecting the change of ownership.

PMC Nova Scotia and Plains Marketing Canada are direct subsidiaries of Plains All American Pipeline, L.P., a Texas partnership. The existing pipeline originates eight miles northeast of Poplar, Montana, and runs to the international boundary between the U.S. and Canada at a point near Raymond, Montana, then connects to similar facilities in the Province of Alberta, Canada. PMC Nova Scotia has, in written correspondence to the Department of State, committed to abide by the relevant terms and conditions of the permit previously held by Wascana Pipe Line Ltd. Further, PMC Nova Scotia indicated in that correspondence that the operation of the pipeline will remain essentially unchanged from that previously permitted. Therefore, in accordance with 22 CFR 161.7(b)(3) and the Department's Procedures for Issuance of a Presidential Permit Where There Has Been a Transfer of the Underlying Facility, Bridge or Border Crossing for Land Transportation (70 FR 30990, May 31, 2005), the Department of State does not intend to conduct an environmental review of the application unless information is brought to its attention that the transfer potentially would have a significant impact on the quality of the human environment.

As required by E.O. 13337, the Department of State is circulating this application to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before April 19, 2006 to Charles Esser, Office of International Energy and Commodity Policy, U.S. Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodity Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: Charles Esser, Office of International Energy and Commodity Policy (EB/ESC/IEC/EPC), U.S. Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by fax at (202) 647–4037. The alternate contact is Matthew T. McManus in the same office, with telephone number (202) 647–3423.

Dated: March 10, 2006.

Matthew T. McManus,

Acting Director, Office of International Energy and Commodity Policy, U.S. Department of State.

[FR Doc. E6–3973 Filed 3–17–06; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the U.S.-Morocco Free Trade Agreement and Chapter 9 of the Dominican Republic-Central America-United States Free Trade Agreement for El Salvador

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

DATES: *Effective Date:* March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Dawn Shackleford, Director for International Procurement, Office of the United States Trade Representative, (202) 395–9461, or Jason Kearns, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–9439.

On June 15, 2004, the United States and Morocco entered into the United States-Morocco Free Trade Agreement ("the USMFTA"). Chapter 9 of the USMFTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annexes 9–A–1 and 9–A–3 of the USMFTA. On August 17, 2004, the President signed into law the United States-Morocco Free Trade Agreement Implementation Act ("the USMFTA Act") (Pub. L. 108–302, 118 Stat. 1103) (19 U.S.C. 3805 note). In section 101(a) of the USMFTA Act, the Congress approved the USMFTA and the statement of administrative action proposed to implement the USMFTA that the President submitted to the Congress. The USMFTA entered into force on January 1, 2006.

On August 5, 2004, the United States and El Salvador entered into the Dominican Republic-Central America-United States Free Trade Agreement ("the CAFTA–DR"). Chapter 9 of the CAFTA–DR sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1.2(b)(i) of the CAFTA–DR. On August 2, 2005, the President signed into law the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("the CAFTA–DR Act") (Pub. L. No. 109–53, 119 Stat. 462) (19 U.S.C. 4001 note). In section 101(a) of the CAFTA–DR Act, the Congress approved the CAFTA–DR and the statement of administrative action proposed to implement the CAFTA–DR that the President submitted to Congress. The CAFTA–DR entered into force on March 1, 2006 for El Salvador.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 ("the Trade Agreements Act") (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Rob Portman, United States Trade Representative, in conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 9 of each the

USMFTA and the CAFTA–DR, do hereby determine that:

1. Morocco and El Salvador are countries, other than major industrialized countries, which, pursuant to the USMFTA and the CAFTA–DR, respectively, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, Morocco and El Salvador are so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Morocco and El Salvador (*i.e.*, goods and services covered by the Schedules of the United States in Annexes 9–A–1 and 9–A–3 of the USMFTA and Annex 9.1.2(b)(i) of the CAFTA–DR, respectively) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded —

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

With respect to Morocco, this waiver shall be applied by all entities listed in the Schedule of the United States to Annex 9–A–1 and in list A of the Schedule of the United States to Annex 9–A–3 of the USMFTA. With respect to El Salvador, this waiver shall be applied by all entities listed in the Schedule of the United States to Section A of Annex 9.1.2(b)(i) and in List A of Section C of Annex 9.1.2(b)(i) of the CAFTA–DR.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Rob Portman,

United States Trade Representative.

[FR Doc. E6–4004 Filed 3–17–06; 8:45 am]

BILLING CODE 3190–W6–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 24, 2006

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–24019.
Date Filed: February 21, 2006.
Parties: Members of the International Air Transport Association.
Subject:
PTC3 Mail Vote 474 Resolution 010e, TC3 Japan, Korea-South East Asia Special Passenger.
Amending Resolution, From Korea (Rep. of) to China (excluding Hong Kong SAR and Macao SAR), (Memo 0945).
Intended effective date: April 1, 2006.

Docket Number: OST–2006–24020.
Date Filed: February 21, 2006.
Parties: Members of the International Air Transport Association.
Subject:
TC1 Passenger Tariff Coordinating Conference, Teleconference, 25–27 July 2005.
TC1 Within South America Resolutions (PTC1 0331).
Minutes: TC1 Teleconference, 25–27 July 2005 (Memo PTC1 338).
Tables: TC1 Within South America specified fare table, (Memo PTC1 0102).
Intended effective date: 1 January 2006.

Docket Number: OST–2006–24021.
Date Filed: February 21, 2006.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 SOUTH 0177 dated June 6, 2005.
TC31 South Pacific Resolutions except between French Polynesia, New Caledonia, New Zealand and USA r1-r38.
Minutes: PTC31 SOUTH 0179 dated June 9, 2005.
Tables: PTC31 SOUTH Fares 0040 dated June 6, 2005.
Technical Correction PTC31 SOUTH Memo 0180.
Intended effective date: October 1, 2005.

Docket Number: OST–2006–24022.
Date Filed: February 21, 2006.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 448.
TC12 North Atlantic USA-Europe (Memo 0183) (except between USA and Austria, Belgium, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland).
Minutes: TC12 North Atlantic Canada, USA-Europe (Memo 0185).
Montreal, June 14–16, 2005.
Tables: TC12 North Atlantic USA-Europe Specified Fares Tables (Memo 0100).
Intended effective date: November 1, 2005.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–3980 Filed 3–17–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 22, 2005 [FR Doc. E5–7716 Filed 12–21–05].

DATES: Comments must be submitted on or before April 19, 2006.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Sean H. McLaurin, at the National Highway Traffic Safety Administration, National Center for Statistics and Analysis (NPO–122), (202) 366–4800. 400 Seventh Street, SW., 6124, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Extension of Clearance.
OMB Number: 2127–0001.
Type of Request: Collection Renewal.

Abstract: The purpose of the NDR is to assist States and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing purposes. Other users obtain the information for transportation safety purposes.

Affected Public: State, Local, or Tribal Government.

Enter Data

Estimated Total Annual Burden: 2859.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

James Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. E6–3941 Filed 3–17–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34841]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's line between milepost 2.0, Lake Yard, OR, and milepost 8.1, North Portland Junction, OR, a distance of approximately 6.1 miles.

The transaction was scheduled to be consummated on March 7, 2006, the effective date of this notice, and the temporary trackage rights will expire on or about March 30, 2006. The purpose of the temporary trackage rights is to facilitate the performance of maintenance work on UP lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34841, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gabriel S. Meyer, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–2659 Filed 3–17–06; 8:45 am]

BILLING CODE 4915–01–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Date/Time: Thursday, March 30, 2006. 9:15 a.m.–4 p.m.

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 93–525.

Agenda: March 30, 2006 Board Meeting; Approval of Minutes of the One Hundred Twenty-First Meeting (November 17, 2005) of the Board of Directors; Chairman's Report; President's Report; Budget Update; Consideration of Fellowship Applications; Grant Review and Approval; Other General Issues.

Contact: Tessie Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: March 15, 2006.

Patricia P. Thomson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 06–2687 Filed 3–16–06; 11:23 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0565." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0565" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

OMB Control Number: 2900–0565.

Type of Review: Extension of a currently approved collection.

Abstract: Cemetery state officials' complete VA Form 21–530a to request allowances for plot or interment for veterans interred at a State-owned veterans cemetery. VA uses the data collected to determine the veteran's eligibility for burial benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 28, 2005 at page 76915.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,100.

Dated: March 8, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–4000 Filed 3–17–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0104]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 19, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0104."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0104" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176, Parts A & B.

OMB Control Number: 2900–0104.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–4176 is used to determine a veteran's eligibility for disability benefits based on an accidental injury that he or she incurred while in the line of duty. VA uses the information collected to determine whether the injury was the result of a willful misconduct by the veteran.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 25, 2005 at page 61695.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,204 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 4,408.

Dated: March 8, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–4003 Filed 3–17–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
March 20, 2006

Part II

Department of Agriculture

Rural Housing Service

Notice of Funds Availability; Multi-Family Housing, Single-Family Housing, Housing Loans and Grants for Fiscal Year 2006; Notices

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 2006 (FY 2006). This action is taken to comply with 42 U.S.C. 1490p, which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

DATES: Effective March 20, 2006.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice contact Lou Paulson, Management Analyst, Single Family Housing Direct Loan Division, telephone 202–720–1478, for single family housing (SFH) issues and Tammy S. Daniels, Loan Specialist, Multi-Family Housing Processing Division, telephone 202–720–0021, for multi-family housing (MFH) issues, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC, 20250. (The telephone numbers listed are not toll free numbers). For information on applying for assistance, visit our Internet Web site at *http://offices.usda.gov* and select your State or check the blue pages in your local telephone directory under "Rural Development" for the office serving your area. Near the end of this Notice is a listing of Rural Development State Directors.

SUPPLEMENTARY INFORMATION:

Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

Part 1940, subpart L of 7 CFR contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." To apply for assistance under these programs or for more information, contact the Rural Development Office for your area.

Multi-Family Housing (MFH)

I. General

A. This provides guidance on MFH funding for the Rural Rental Housing program (RRH) for FY 2006. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 2006, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) Section 504 Rural Housing Grants and Section 533 Housing Preservation Grant (HPG) programs.

B. MFH loan and grant levels for FY 2006 are as follows:

MFH Loan Programs Credit Sales	$1,485,000
Section 514 Farm Labor Housing (LH) loans *	$38,116,887
Section 515 Rural Rental Housing (RRH) loans	$99,000,000
Section 521 Rental Assistance (RA) and 502(c)(5)(C) Advance	$638,650,980
Section 516 LH grants	$13,860,000
Sections 525 Technical and Supervisory Assistance grants (TSA) and 509 Housing Application Packaging grants (HAPG) (Shared between single and multi-family housing)	$990,000
Section 533 Housing Preservation grants (HPG) *	$10,497,716
Section 538 Guaranteed Rural Rental Housing Program	$99,000,000
Preservation Revolving Loan Fund Demonstration Program	$6,415,183
Section 515 Multi-Family Housing Preservation and Revitalization Restructuring Demonstration	$8,910,000
Rural Housing Voucher Program	$15,840,000
Housing Demonstration Program for Mississippi Band of Choctaw Indians	$990,000
Natural disaster 2003/2004 hurricane funds (Section 516 LH grants)	$880,519

* Includes Carryover Funds.

II. Funds Not Allocated to States

A. Credit Sales Authority

For FY 2006, $1,485,000 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State.

B. Section 538 Guaranteed Rural Rental Housing Program

Guaranteed loan funds will be made available under a Notice of Funding Availability (NOFA) being published in this **Federal Register**. Additional guidance is provided in the NOFA.

C. Multifamily Revitalization Initiative Demonstration Program

The Multifamily Revitalization Initiative Demonstration Program is designed to preserve and revitalize Section 515 multifamily rental housing properties. The Program is designed to utilize several tools to restructure debt and financing of an aging portfolio of rental properties. The objective is to ensure that properties have sufficient resources to continue providing safe and affordable housing for low-income rural residents.

D. Rural Housing Voucher Program

The Rural Housing Voucher Program, authorized under Section 542 of the Housing Act of 1949, is designed to provide tenant protections in properties that prepay their mortgages after September 30, 2005. These Vouchers are portable and will enable tenants to continue to access affordable housing without benefit of the traditional Rental Assistance Program.

III. Farm Labor Housing (LH) Loans and Grants

The Administrator has the authority to transfer the allocation of budget authority between the two programs. Upon NOFA closing the Administrator will evaluate the responses and determine proper distribution of funds between loans and grants.

A. Section 514 Farm LH Loans

1. These loans are funded in accordance with 7 CFR 1940.579(a).

FY 2006 Appropriation	$38,116,887
Available for Off-Farm Loans	$31,937,082
Available for On-Farm Loans	$2,000,000
National Office Reserve	$4,179,805

2. Off-farm loan funds will be made available under a NOFA being published in this **Federal Register**. Additional guidance is provided in the NOFA.

B. Section 516 Farm LH Grants

1. Grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.

FY 2006 Appropriation	$13,860,000
Available for LH Grants for Off-Farm	$10,490,040
National Office Reserve	$3,369,960

2. Labor Housing grant funds for Off-Farm will be made available under a NOFA being published in this **Federal Register**. Additional guidance is provided in the NOFA.

C. Labor Housing Rental Assistance (RA) will be held in the National Office for use with LH loan and grant applications. RA is only available with am LH loan of at least 5 percent of the total development cost. Projects without a LH loan cannot receive RA.

IV. Section 515 RRH Loan Funds

FY 2006 Section 515 Rural Rental Housing allocation (Total)	$99,000,000
New Construction funds and set-asides	$25,740,000
New construction loans	$8,562,510
Set-aside for nonprofits	$8,910,000
Set-aside for underserved counties and colonias	$4,950,000
Earmark for EZ, EC, or REAP Zones	$2,327,490
State RA designated reserve	$990,000
Rehab and repair funds and equity	$53,460,000
Rehab and repair loans	$48,510,000
Designated equity loan reserve	$4,950,000
General Reserve	$19,800,000

A. New Construction Loan Funds

New construction loan funds will be made available using a national NOFA being published in this **Federal Register**. Additional guidance is provided in the NOFA.

B. National Office New Construction Set-asides

The following legislatively mandated set-asides of funds are part of the National office set-aside:

1. Nonprofit Set-aside

An amount of $8,562,510 has been set aside for nonprofit applicants. All Nonprofit loan proposals must be located in designated places as defined in 7 CFR 3560.

2. Underserved Counties and Colonias Set-Aside

An amount of $4,950,000 has been set aside for loan requests to develop units in the underserved 100 most needy counties or colonias as defined in section 509(f) of the Housing Act of 1949 as amended. Priority will be given to proposals to develop units in colonias or tribal lands.

3. EZ, EC or REAP Zone Earmark

An amount of $2,327,490 has been earmarked for loan requests to develop units in EZ or EC communities or REAP Zones until June 30, 2006.

C. Designated Reserves for State RA

An amount of $990,000 of Section 515 loan funds has been set aside for matching with projects in which an active State sponsored RA program is available. The State RA program must be comparable to the RHS RA program.

D. Repair and Rehabilitation Loans

Tenant health and safety continues to be the top priority. Repair and rehabilitation funds must be first targeted to RRH facilities that have physical conditions that affect the health and safety of tenants and subsequently made available to facilities that have deferred maintenance. All funds will be held in the National office and will be distributed based upon indicated rehabilitation needs in the MFH survey conducted in November 2005.

E. Designated Reserve for Equity Loans

An amount of $4,950,000 has been designated for the equity loan preservation incentive described in 7 CFR 3560. The $4,950,000 will be further divided into $4 million for equity loan requests currently on the pending funding list and $950,000 to facilitate the transfer of properties from for-profit owners to nonprofit corporations and public bodies. Funds for such transfers would be authorized only for for-profit owners who are currently on the pending funding list who agree to transfer to nonprofit corporations or public bodies rather than to remain on the pending list. If insufficient transfer requests are generated to utilize the full $1 million set aside for nonprofit and public body transfers, the balance will revert to the existing pending equity loan funding list.

F. General Reserve

There is one general reserve fund of $19,800,000. Some examples of immediate allowable uses include, but are not limited to, hardships and

emergencies, RH cooperatives or group homes, or RRH preservation.

V. Section 533 Housing Preservation Grants (HPG).

Total Available	$9,900,000
Carryover Funds	$597,716
Less General Reserve	$990,000
Less Earmark for EZ, EC or REAP Zones	$594,000
Total Available for Distribution	$8,913,716

Amount available for allocation. (See end of this Notice for HPG State allocations.) Fund availability will be announced in a NOFA being published in the **Federal Register**.

The amount of $594,000 is earmarked for EZ, EC or REAP Zones until June 30, 2006.

Single Family Housing (SFH)

I. General

All SFH programs are administered through field offices. For more information or to make application, please contact the Rural Development office servicing your area. To locate these offices, contact the appropriate State Office from the attached State Office listing, visit our Web site at *http://offices.usda.gov* or check the blue pages in your local telephone directory under "Rural Development" for the office serving your area.

A. This notice provides SFH allocations for FY 2006. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568. Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation are located on a chart at the end of this notice.

B. The SFH levels authorized for FY 2006 are as follows:

Section 502 Guaranteed Rural Housing (RH) loans:	
Nonsubsidized Guarantees—Purchase	**$3,539,282,975
Nonsubsidized Guarantees—Refinance	**$243,016,441
Section 502 Direct RH loans:	
Very low-income subsidized loans	*$564,695,478
Low-income subsidized loans	*$564,695,478
Credit sales (Nonprogram)	$10,000,000
Section 504 housing repair loans	*$34,651,692
Section 504 housing repair grants	*/**$30,123,945
Section 509 compensation for construction defects**	$204,066
Section 523 mutual and self-help housing grants	*/**$34,374,327
Section 523 Self-Help Site Loans	$4,998,058
Section 524 RH site loans	$5,000,000
Section 306C Water and waste disposal grants	**$1,484,567
Section 525 Supervisory and technical Assistance and Section 509 Housing Application Packaging Grants Total Available for single And multi-family	**$1,056,370
Natural disaster funds (Section 502 Direct loans)	**$1,801,535
Natural disaster 2005 hurricane funds (Section 502 Direct loans)	$175,592,625
Natural disaster 2005 hurricane funds (Section 502 Guaranteed loans)	$1,293,103,448
Natural disaster funds (Section 504 loans)	**$3,055,447
Natural disaster 2003/2004 hurricane funds (Section 504 loans)	**$15,306,168
Natural disaster 2005 hurricane funds (Section 504 loans)	$34,188,034
Natural disaster funds (Section 504 grants)	**$38,157
Natural disaster 2003/2004 hurricane funds (Section 504 grants)	**$2,360,903
Natural disaster 2005 hurricane funds (Section 504 grants)	$20,000,000

* Includes funds for EZ/EC and REAP communities until June 30, 2006.
** Carryover funds are included in the balance.

C. SFH Funding Not Allocated to States

The following funding is not allocated to States by formula. Funds are made available to each state on a case-by-case basis.

1. Credit Sale Authority

Credit sale funds in the amount of $10,000,000 are available only for nonprogram sales of Real Estate Owned (REO) property.

2. Section 509 Compensation for Construction Defects

$204,066 is available for compensation for construction defects.

3. Section 523 Mutual and Self-Help Technical Assistance Grants

$34,374,327 is available for Section 523 Mutual and Self-Help Technical Assistance Grants. Of these funds, $990,000 is earmarked for EZ, EC or REAP Zones until June 30, 2006. A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) contractor on all predevelopment, new, and existing (refunding) grant applications.

4. Section 523 Mutual and Self-Help Site Loans and Section 524 RH Site Loans

$4,998,058 and $5,000,000 are available for Section 523 Mutual Self-Help and Section 524 RH Site loans, respectively.

5. Section 306C WWD Grants to Individuals in Colonias

The objective of the Section 306C WWD individual grant program is to facilitate the use of community water or waste disposal systems for the residents of the colonias along the U.S.-Mexico border.

The total amount available to Arizona, California, New Mexico, and Texas will

be $1,484,567 for FY 2006. This amount includes carryover unobligated balance and a transferred amount of $1 million from the Rural Utilities Service (RUS) to RHS for processing individual grant applications.

6. Section 525 Technical and Supervisory Assistance (TSA) and Section 509 Housing Application Packaging Grants (HAPG)

$1,056,370 is available for the TSA and HAPG programs. Funds are available on a limited basis for TSA grants. In accordance with the provisions of 7 CFR 1944.525, funding will be targeted nationally and then on an individual basis to States/areas with the highest degree of substandard housing and persons in poverty eligible to receive Agency housing assistance. States should submit proposals from potential applicants to the National Office for review and concurrence prior to authorizing an application.

Requests should be submitted to the National Office for HAPG based on projected usage of these funds for the quarter or as needed. HAPG requests should be submitted by e-mail to Gloria Denson, Senior Loan Specialist, SFH Direct Loan Division, 202–720–1487. Reserve funds will be held at the National Office and requests from eligible States will be considered on a first-come, first-served basis. Additional guidance is provided in the NOFA.

7. Natural Disaster Funds

Funds are available until exhausted to those States with active Presidential Declarations.

8. Deferred Mortgage Payment Demonstration

There is no FY 2006 funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

II. State Allocations

A. Section 502 Nonsubsidized Guaranteed RH (GRH) Loans

1. Purchase—Amount Available for Allocation

Total Available—Purchase	$3,539,282,975
Less National office General Reserve	$1,218,154,125
Less Special Outreach Area Reserve	$522,066,053
Basic Formula—Administrative Allocation	$1,799,062,798

a. *National office General Reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

b. *Special Outreach Areas.* FY 2006 GRH funding is allocated to States in two funding streams. Seventy percent of GRH funds may be used in any eligible area. Thirty percent of GRH funds are to be used in special outreach areas. Special outreach areas for the GRH program are defined as those areas within a State that are *not* located within a metropolitan statistical area (MSA).

c. *National Office Special Area Outreach Reserve.* A special outreach area reserve fund has been established at the National office. Funds from this reserve may only be used in special outreach areas.

2. Refinance—Amount Available for Allocation

Total Available—Refinance	$243,016,441
Less National office general reserve	$243,016,441
Basic formula—Administrative Allocation	$-0-

a. *Refinance Funds.* Refinance loan funds will be distributed from the National Office on a case-by-case basis.

b. *National office general reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

B. Section 502 Direct RH Loans

1. Amount Available for Allocation

Total Available	$1,129,390,956
Less Required Set Aside for Underserved Counties and Colonias	$56,469,548
EZ, EC and REAP Earmark	$10,679,648
Less General Reserve	$148,107,873
Administrator's Reserve	$10,107,873
Hardships & Homelessness	$2,000,000
Rural Housing Demonstration Program	$1,000,000
Homeownership Partnership	$110,000,000
Program funds for the sale of REO properties	$25,000,000
Less Designated Reserve for Self-Help	$175,000,000
Basic Formula Administrative Allocation	$739,133,887

2. Reserves

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship and homeless applicants including the direct Section 502 loan and Section 504 loan and grant programs.

(ii) Rural Home Loan Partnerships (RHLP) and Community Development Financial Institutions (CDFI) loans.

(iii) States will leverage with funding from other sources.

(iv) Areas targeted by the State according to its strategic plan.

b. *National Office Reserves.*

(i) General Reserve. The National office has a general reserve of $148 million. Of this amount, the Administrator's reserve is $10,107,873. One of the purposes of the Administrator's reserve will be for loans in Indian Country. Indian Country consists of land inside the boundaries of Indian reservations, communities made up mainly of Native Americans, Indian trust and restricted land, and tribal allotted lands. Another purpose of the reserve will be to provide funding for subsequent loans for essential improvements or repairs and transfers with assumptions.

(ii) Hardship and Homelessness Reserve. $2 million has been set aside for hardships and homeless.

(iii) Rural Housing Demonstration Program. $1 million dollars has been set aside for innovative demonstration initiatives.

(iv) Program Credit Sales. $25 million dollars has been set aside for program sales of REO property.

c. *Homeownership Partnership.* $110 million dollars has been set aside for Homeownership Partnerships. These funds will be used to expand existing partnerships and create new partnerships, such as the following:

(i) Department of Treasury, Community Development Financial Institutions (CDFI). Funds will be available to fund leveraged loans made in partnership with the Department of Treasury CDFI participants.

(ii) Partnership initiatives established to carry out the objectives of the rural home loan partnership (RHLP).

d. *Designated Reserve for Self-Help.* $175 million dollars has been set aside to assist participating Self-Help applicants. The National office will contribute 100 percent from the National office reserve. States are not required to contribute from their allocated Section 502 RH funds.

e. *Underserved Counties and Colonias.* An amount of $56,469,548 has been set aside for the 100 underserved counties and colonias.

f. *Empowerment Zone (EZ), Enterprise Community (EC) or Rural Economic Area Partnership (REAP) earmark.* An amount of $10,679,648 has been earmarked until June 30, 2006, for loans in EZ, EC or REAP Zones.

g. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.)

h. *Suballocation by the State Director.* The State Director may suballocate to each area office using the methodology and formulas required by 7 CFR part 1940, subpart L. If suballocated to the area level, the Rural Development Manager will make funds available on a first-come, first-served basis to all offices at the field or area level. No field office will have its access to funds restricted without the prior written approval of the Administrator.

B. Section 504 Housing Loans and Grants

Section 504 grant funds are included in the Rural Housing Assistance Grant program (RHAG) in the FY 2006 appropriation.

1. Amount Available for Allocation

Section 504 Loans

Total Available	$34,651,692
Less 5% for 100 Underserved Counties and Colonias	$1,732,584
EZ, EC or REAP Zone Earmark	$652,086
Less General Reserve	$733,915
Basic Formula—Administrative Allocation	$31,533,107

Section 504 Grants

Total Available	$30,123,945
Less 5% for 100 Underserved Counties and Colonias	$1,480,050
Less EZ, EC or REAP Earmark	$594,000
Less General Reserve	$1,649,895
Basic Formula—Administrative Allocation	$26,400,000

2. Reserves and Set-asides

a. *State Office Reserve.* State Directors must maintain an adequate reserve to handle all anticipated hardship applicants based upon historical data and projected demand.

b. *Underserved Counties and Colonias.* Approximately $1,732,584 and $1,480,050 have been set aside for the 100 underserved counties and colonias until June 30, 2006, for the Section 504 loan and grant programs, respectively.

c. *Empowerment Zone (EZ) and Enterprise Community (EC) or Rural Economic Area Partnership (REAP) Earmark (Loan Funds Only).* $652,086 and $594,000 have been earmarked through June 30, 2006, for EZ, EC or REAPs for the Section 504 loan and grant programs, respectively.

d. *General Reserve.* $733,915 for Section 504 loan hardships and $1,649,895 for Section 504 grant extreme hardships have been set-aside in the general reserve. For Section 504 grants, an extreme hardship case is one requiring a significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant.

INFORMATION ON BASIC FORMULA CRITERIA, DATA SOURCE AND WEIGHT, ADMINISTRATIVE ALLOCATION, POOLING OF FUNDS, AND AVAILABILITY OF THE ALLOCATION

No.\ Description	Section 502 Nonsubsidized Guaranteed RH Loans	Section 502 Direct RH Loans	Section 504 Loans and Grants
1. Basic formula criteria, data source, and weight.	See 7 CFR 1940.563(b)	See 7 CFR 1940.565(b)	See 7 CFR 1940.566(b) and 1940.567(b).
2. Administrative Allocation:			
Western Pacific Area	$4,000,000	$2,000,000	$500,000 loan. $500,000 grant.
3. Pooling of funds:			
a. Mid-year pooling	If necessary	If necessary.	If necessary.
b. Year-end pooling	August 12, 2006	July 14, 2006	July 14, 2006.
c. Underserved counties & colonias.	N/A	June 30, 2006	June 30, 2006.
d. EZ, EC or REAP	N/A	June 30, 2006.	June 30, 2006.
e. Credit sales	N/A	June 30, 2006	N/A.
4. Availability of the allocation:			

No.\ Description	Section 502 Nonsubsidized Guaranteed RH Loans	Section 502 Direct RH Loans	Section 504 Loans and Grants
a. first quarter	40 percent	50 percent	50 percent.
b. second quarter	70 percent	75 percent	75 percent.
c. third quarter	90 percent	100 percent	100 percent.
d. fourth quarter	100 percent	100 percent	100 percent.

1. Data derived from the 2000 U.S. Census is available on the Web at *http://census.sc.egov.usda.gov.*

2. Due to the absence of Census data.

3. All dates are tentative and are for the close of business (COB). Pooled funds will be placed in the National office reserve and made available administratively. The Administrator reserves the right to redistribute funds based upon program performance.

4. Funds will be distributed cumulatively through each quarter listed until the National office year-end pooling date.

Dated: March 8, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

BILLING CODE 3410–XV–P

Rural Housing Service

State Office Locations

ALABAMA	GEORGIA	LOUISIANA
Steve Pelham Sterling Centre 4121 Carmichael Road, Suite 601 Montgomery, AL 36106-3683 (334) 279-3400	F. Stone Workman Stephens Federal Building 355 E Hancock Avenue Athens, GA 30601-2768 (706) 546-2162	Michael B. Taylor 3727 Government Street Alexandria, LA 71302 (318) 473-7920
ALASKA	**HAWAII**	**MAINE**
Bill Allen Suite 201 800 W Evergreen Palmer, AK 99645-6539 (907) 761-7705	Lorraine Shin Room 311, Federal Building 154 Waianuenue Avenue Hilo, HI 96720 (808) 933-8309	Michael W. Aube PO Box 405 967 Illinois Avenue, Suite 4 Bangor, ME 04402-0405 (207) 990-9106
ARIZONA	**IDAHO**	**MASSACHUSETTS, CONN, R. ISL.**
Eddie Browning Phoenix Corporate Center 3003 N Central Avenue, Suite 900 Phoenix, AZ 85012-2906 (602) 280-8755	Michael A. Field Suite A1 9173 W Barnes Dr Boise, ID 83709 (208) 378-5600	David H. Tuttle 771 Corporate Drive Lexington, KY 40503 (859) 224-7322
ARKANSAS	**ILLINOIS**	**MICHIGAN**
Roy Smith Room 3416 700 W Capitol Little Rock, AR 72201-3225 (501) 301-3200	Douglas Wilson 2118 W. Park Court Suite A Champaign, IL 61821 (217) 403-6222	Dale Sherwin Alexandria, LA 71302 (318) 473-7920
CALIFORNIA	**INDIANA**	**MINNESOTA**
D. Paul Venosdel Agency 4169 430 G Street Davis, CA 95616-4169 (530) 792-5800	Robert White 5975 Lakeside Boulevard Indianapolis, IN 46278 (317) 290-3100	Stephen G. Wenzel 967 Illinois Avenue, Suite 4 Bangor, ME 04402-0405 (207) 990-9118
COLORADO	**IOWA**	**MISSISSIPPI**
Joe Hostetler, Acting Room E100 655 Parfet Street Lakewood, CO 80215 (720) 544-2903	Mark Reisinger 873 Federal Bldg 210 Walnut Street Des Moines, IA 50309 (515) 284-4663	David H. Tuttle 451 West Street Amherst, MA 01002 (413) 253-4300
DELAWARE & MARYLAND	**KANSAS**	**MISSOURI**
Marlene B. Elliott 1221 College Park Drive Suite 200 Dover, DE 19904 (302) 857-3625	Charles (Chuck) R. Banks 1303 SW First American Place Suite 100 Topeka, KS 66604-4040 (785) 271-2700	Jason Church, Acting 3001 Coolidge Road, Suite 200 East Lansing, MI 48823 (517) 324-5100
FLORIDA & VIRGIN ISLANDS	**KENTUCKY**	**MONTANA**
Charles W. Clemons, Sr. PO Box 147010 4440 NW 25th Place Gainesville, FL 32614-7010 (352) 338-3435	Kenneth Slone 451 West Street Amherst, MA 01002 (413) 253-4300	Stephen G. Wenzel 410 AgriBank Bldg. 375 Jackson Street St. Paul, MN 55101-1853 (651) 602-7792

NEBRASKA	OKLAHOMA	UTAH
Nick Walters Federal Bldg., Suite 831 100 W. Capitol Street Jackson, MS 39269 (601) 965-4325	John Cooper Suite 260 4405 Bland Road Raleigh, NC 27609 919-873-2000	Lynn Jensen Federal Bldg, Room 210 200 Fourth Street, SW Huron, SD 57350 (605) 352-1100
NEVADA	**OREGON**	**VERMONT & NEW HAMPSHIRE**
Gregory Branum Parkade Center, Suite 235 601 Business Loop 70 West Columbia, MO 65203 (573) 876-9301	Clare Carlson Federal Bldg., Room 208 220 East Rooser, P.O. Box 1737 Bismarck, ND 58502-1737 (701) 530-2061	Mary (Ruth) Tackett Suite 300 3322 W End Avenue Nashville, TN 37203-1084 (615) 783-1300
NEW JERSEY	**PENNSYLVANIA**	**VIRGINIA**
Tim Ryan Suite B 900 Technology Boulevard Bozeman, MT 59715 (406) 585-2551	Randall Hunt Federal Bldg., Room 507 200 N. High Street Columbus, OH 43215-2477 (614) 255-2500	R. Bryan Daniel Federal Bldg, Suite 102 101 S Main Temple, TX 76501 (254) 742-9700
NEW MEXICO	**PUERTO RICO**	**WASHINGTON**
Scot Blehm Federal Bldg., Room 152 100 Centennial Mall N Lincoln, NE 68508 (402) 437-5551	Brent J. Kisling Suite 108 100 USDA Stillwater, OK 74074-2654 (405) 742-1000	John R. Cox Wallace F Bennett Federal Bldg 125 S State Street, Room 4311 Salt Lake City, UT 84147 (801) 524-4320
NEW YORK	**SOUTH CAROLINA**	**WEST VIRGINIA**
Larry J. Smith 1390 South Curry Street Carson City, NV 89703 (775) 887-1222	Mark Simmons Suite 1410 101 SW Main Portland, OR 97204-3222 (503) 414-3300	Jolinda H. LaClair City Center, 3rd Floor 89 Main Street Montpelier, VT 05602 (802) 828-6000
NORTH CAROLINA	**SOUTH DAKOTA**	**WISCONSIN**
Andrew M.G. Law 5th Floor N. Suite 500 8000 Midlantic Drive Mt. Laurel, NJ 08054 (856) 787-7700	Gary Groves Suite 330 One Credit Union Place Harrisburg, PA 17110-2996 (717) 237-2299	Philip Stetson (Acting) 1606 Santa Rosa Road Suite 238 Richmond, VA 23229-5014 (804) 287-1598
NORTH DAKOTA	**TENNESSEE**	**WYOMING**
Paul Gutierrez Room 255 6200 Jefferson Street, NE Albuquerque, NM 87109 (505) 761-4973	Jose A. Otero Suite 601 654 Munoz Rivera Avenue San Juan, PR 00936-6106 (787) 766-5095	Sandy Boughton (Acting) Suite B 1835 Black Lake Blvd, SW Olympia, WA 98512-5715 (360) 704-7740
OHIO	**TEXAS**	
Patrick H. Brennan The Galleries of Syracuse 441 S. Salina Street, Suite 357 Syracuse, NY 13202-2541 (315) 477-6417	Tee Miller Strom Thurmond Federal Bldg 1835 Assembly Street, Room 1007 Columbia, SC 29201 (803) 765-5163	

RURAL HOUSING SERVICE FY 2006
SECTION 533
HOUSING PRESERVATION GRANT
ALLOCATION IN THOUSANDS

STATE	FORMULA FACTOR	TOTAL ALLOCATION
ALABAMA	0.02957	$310,417
ALASKA	0.00587	$61,622
ARIZONA	0.01780	$186,859
ARKANSAS	0.02310	$242,497
CALIFORNIA	0.04653	$488,459
COLORADO	0.00840	$88,181
DELAWARE	0.00190	$19,946
MARYLAND	0.00880	$92,380
FLORIDA	0.02890	$303,384
VIRGIN ISLANDS	0.00273	$28,659
GEORGIA	0.03867	$405,947
HAWAII	0.00790	$82,932
WPA	0.00647	$67,920
IDAHO	0.00743	$77,998
ILLINOIS	0.02250	$236,199
INDIANA	0.02157	$226,436
IOWA	0.01340	$140,669
KANSAS	0.01130	$118,624
KENTUCKY	0.03483	$365,635
LOUISIANA	0.03170	$332,778
MAINE	0.00913	$95,844
MASSACHUSETTS	0.00793	$83,247
CONNECTICUT	0.00453	$47,555
RHODE ISLAND	0.00100	$10,498
MICHIGAN	0.02977	$312,517
MINNESOTA	0.01673	$175,627
MISSISSIPPI	0.03180	$333,827
MISSOURI	0.02460	$258,244
MONTANA	0.00620	$65,086
NEBRASKA	0.00713	$74,849
NEVADA	0.00263	$27,609
NEW JERSEY	0.00657	$68,970
NEW MEXICO	0.01437	$150,852
NEW YORK	0.02753	$289,002
NORTH CAROLINA	0.04497	$472,082
NORTH DAKOTA	0.00413	$43,356
OHIO	0.03450	$362,171
OKLAHOMA	0.01917	$201,241
OREGON	0.01423	$149,382
PENNSYLVANIA	0.03687	$387,051
PUERTO RICO	0.04923	$516,803
SOUTH CAROLINA	0.02690	$282,389
SOUTH DAKOTA	0.00597	$62,671
TENNESSEE	0.02973	$312,097
TEXAS	0.07645	$802,550
UTAH	0.00430	$45,140
VERMONT	0.00403	$42,306
NEW HAMPSHIRE	0.00503	$52,804
VIRGINIA	0.02660	$279,239
WASHINGTON	0.01743	$182,975
WEST VIRGINIA	0.01937	$203,341
WISCONSIN	0.01873	$196,622
WYOMING	0.00307	$32,228
DISTR.	1.00000	$8,913,716
N/O RES.		$990,000
EZ/EC/REAP		$594,000
TTL AVAIL.		$10,497,716

RURAL HOUSING SERVICE
ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

	STATE	STATE BASIC FACTOR	FORMULA	TOTAL FY 2006 ALLOCATION
1	ALABAMA	0.02893348		$19,158
2	ARIZONA	0.01551438		$12,128
3	ARKANSAS	0.02202430		$15,538
4	CALIFORNIA	0.04281159		$26,426
5	COLORADO	0.01225178		$10,228
6	CONNECTICUT	0.00445853		$6,522
7	DELAWARE	0.00293815		$5,540
9	FLORIDA	0.02769317		$18,508
10	GEORGIA	0.03803061		$23,922
12	IDAHO	0.00847438		$8,440
13	ILLINOIS	0.02627571		$17,764
15	INDIANA	0.02616726		$17,708
16	IOWA	0.01764334		$13,242
18	KANSAS	0.01336777		$11,004
20	KENTUCKY	0.02807301		$18,706
22	LOUISIANA	0.02361424		$16,370
23	MAINE	0.01109070		$9,810
24	MARYLAND	0.01010209		$9,292
25	MASSACHUSETTS	0.00622585		$8,152
26	MICHIGAN	0.03579346		$22,750
27	MINNESOTA	0.02361828		$16,372
28	MISSISSIPPI	0.02636473		$17,812
29	MISSOURI	0.02809053		$18,716
31	MONTANA	0.00738806		$7,870
32	NEBRASKA	0.00953784		$8,996
33	NEVADA	0.00339314		$5,778
34	NEW HAMPSHIRE	0.00666198		$7,490
35	NEW JERSY	0.00551402		$7,696
36	NEW MEXICO	0.01296637		$10,792
37	NEW YORK	0.03378933		$21,700
38	NORTH CAROLINA	0.05148079		$30,968
40	NORTH DAKOTA	0.00469453		$6,460
41	OHIO	0.03725173		$23,514
42	OKLAHOMA	0.02019475		$14,580
43	OREGON	0.01654303		$12,666
44	PENNSYLVANIA	0.04269918		$26,368
45	RHODE ISLAND	0.00090026		$4,588
46	SOUTH CAROLINA	0.02669849		$17,986
47	SOUTH DAKOTA	0.00705037		$7,694
48	TENNESSEE	0.03062418		$20,042
49	TEXAS	0.07365688		$42,586
52	UTAH	0.00500465		$6,622
53	VERMONT	0.00579860		$7,038
54	VIRGINIA	0.02711459		$18,204
56	WASHINGTON	0.01939199		$14,158
57	WEST VIRGINIA	0.01591004		$12,334
58	WISCONSIN	0.02634031		$17,798
59	WYOMING	0.00393497		$6,062
60	ALASKA	0.00623983		$7,270
61	HAWAII	0.00623301		$7,266
62	W PAC ISLANDS	0.00239453		$2,000
63	PUERTO RICO	0.00884495		$13,060
64	VIRGIN ISLANDS	0.00217552		$5,140
	STATE TOTALS			$739,134
	100 UNDERSERVED COUNTIES/COLONIAS			$56,470
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK			$10,680
	GENERAL RESERVE			$148,108
	SELF HELP			$175,000
	TOTAL			$1,129,391

RURAL HOUSING SERVICE
FISCAL YEAR 2005
ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

	STATE	VERY LOW INCOME ALLOCATION	LOW INCOME ALLOCATION 50 PERCENT
1	ALABAMA	$9,579	$9,579
2	ARIZONA	$6,064	$6,064
3	ARKANSAS	$7,769	$7,769
4	CALIFORNIA	$13,213	$13,213
5	COLORADO	$5,114	$5,114
6	CONNECTICUT	$3,261	$3,261
7	DELAWARE	$2,770	$2,770
9	FLORIDA	$9,254	$9,254
10	GEORGIA	$11,961	$11,961
12	IDAHO	$4,220	$4,220
13	ILLINOIS	$8,882	$8,882
15	INDIANA	$8,854	$8,854
16	IOWA	$6,621	$6,621
18	KANSAS	$5,502	$5,502
20	KENTUCKY	$9,353	$9,353
22	LOUISIANA	$8,185	$8,185
23	MAINE	$4,905	$4,905
24	MARYLAND	$4,646	$4,646
25	MASSACHUSETTS	$4,076	$4,076
26	MICHIGAN	$11,375	$11,375
27	MINNESOTA	$8,186	$8,186
28	MISSISSIPPI	$8,906	$8,906
29	MISSOURI	$9,358	$9,358
31	MONTANA	$3,935	$3,935
32	NEBRASKA	$4,498	$4,498
33	NEVADA	$2,889	$2,889
34	NEW HAMPSHIRE	$3,745	$3,745
35	NEW JERSY	$3,848	$3,848
36	NEW MEXICO	$5,396	$5,396
37	NEW YORK	$10,850	$10,850
38	NORTH CAROLINA	$15,484	$15,484
40	NORTH DAKOTA	$3,230	$3,230
41	OHIO	$11,757	$11,757
42	OKLAHOMA	$7,290	$7,290
43	OREGON	$6,333	$6,333
44	PENNSYLVANIA	$13,184	$13,184
45	RHODE ISLAND	$2,294	$2,294
46	SOUTH CAROLINA	$8,993	$8,993
47	SOUTH DAKOTA	$3,847	$3,847
48	TENNESSEE	$10,021	$10,021
49	TEXAS	$21,293	$21,293
52	UTAH	$3,311	$3,311
53	VERMONT	$3,519	$3,519
54	VIRGINIA	$9,102	$9,102
56	WASHINGTON	$7,079	$7,079
57	WEST VIRGINIA	$6,167	$6,167
58	WISCONSIN	$8,899	$8,899
59	WYOMING	$3,031	$3,031
60	ALASKA	$3,635	$3,635
61	HAWAII	$3,633	$3,633
62	W PAC ISLANDS	$1,000	$1,000
63	PUERTO RICO	$6,530	$6,530
64	VIRGIN ISLANDS	$2,570	$2,570
	STATE TOTALS	$369,417	$369,417
	100 UNDERSERVED COUNTIES/COLONIAS	$28,235	$28,235
	EZ/EC/REAP RESERVE	$5,340	$5,340
	GENERAL RESERVE	$74,204	$74,204
	SELF HELP	$87,500	$87,500
	TOTAL	$564,696	$564,696

RURAL HOUSING SERVICE
FISCAL YEAR 2006
ALLOCATION IN ACTUAL DOLLARS
SECTION 502 GUARANTEED PURCHASE LOANS (NONSUBSIDIZED)

STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2006 ALLOCATION
Alabama	0.02657575	$47,836,350
Alaska	0.00722325	$13,001,850
Arizona	0.01640900	$29,536,200
Arkansas	0.02282102	$41,077,836
California	0.05030996	$90,557,928
Colorado	0.01357525	$24,435,450
Connecticut	0.00408986	$7,361,748
Delaware	0.00276106	$4,969,908
Florida	0.02650361	$47,706,498
Georgia	0.03793281	$68,279,058
Hawaii	0.00796215	$14,331,870
Idaho	0.00888491	$15,992,838
Illinois	0.02591265	$46,642,770
Indiana	0.02361952	$42,515,136
Iowa	0.01674764	$30,145,752
Kansas	0.01333450	$24,002,100
Kentucky	0.02667768	$48,019,824
Louisiana	0.02306785	$41,522,130
Maine	0.01154316	$20,777,688
Maryland	0.00944838	$17,007,084
Massachusetts	0.00620846	$11,175,228
Michigan	0.03318174	$59,727,132
Minnesota	0.02265572	$40,780,296
Mississippi	0.02650848	$47,715,264
Missouri	0.02830414	$50,947,452
Montana	0.00778549	$14,013,882
Nebraska	0.00963559	$17,344,062
Nevada	0.00373060	$6,715,080
New Hampshire	0.00696793	$12,542,274
New Jersey	0.00489407	$8,809,326
New Mexico	0.01349689	$24,294,402
New York	0.03640605	$65,530,890
North Carolina	0.05076681	$91,380,258
North Dakota	0.00440032	$7,920,576
Ohio	0.03518978	$63,341,604
Oklahoma	0.02008600	$36,154,800
Oregon	0.01909631	$34,373,358
Pennsylvania	0.04089133	$73,604,394
Puerto Rico	0.00919939	$16,558,902
Rhode Island	0.00075627	$1,361,286
South Carolina	0.02526494	$45,476,892
South Dakota	0.00751015	$13,518,270
Tennessee	0.02902148	$52,238,664
Texas	0.07276234	$130,972,212
Utah	0.00510515	$9,189,270
Vermont	0.00663633	$11,945,394
Virgin Islands	0.00306743	$5,521,374
Virginia	0.02554389	$45,979,002
Washington	0.02205374	$39,696,732
West Pac	N/A	$4,000,000
West Virginia	0.01502432	$27,043,776
Wisconsin	0.02575423	$46,357,614
Wyoming	0.00395173	$7,113,114
STATE TOTALS		$1,799,062,798
GENERAL RESERVE		$1,218,154,125
SPECIAL OUTREACH AREAS RESERVE		$522,066,053
TOTAL		$3,539,282,976

** Total includes FY 2005 Carryover and Rescission

RURAL HOUSING SERVICE
FISCAL YEAR 2006
ALLOCATION IN ACTUAL DOLLARS
SECTION 502 GUARANTEED REFINANCE LOANS (NONSUBSIDIZED)

STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2006 ALLOCATION
Alabama	N/A	$0
Alaska	N/A	$0
Arizona	N/A	$0
Arkansas	N/A	$0
California	N/A	$0
Colorado	N/A	$0
Connecticut	N/A	$0
Delaware	N/A	$0
Florida	N/A	$0
Georgia	N/A	$0
Hawaii	N/A	$0
Idaho	N/A	$0
Illinois	N/A	$0
Indiana	N/A	$0
Iowa	N/A	$0
Kansas	N/A	$0
Kentucky	N/A	$0
Louisiana	N/A	$0
Maine	N/A	$0
Maryland	N/A	$0
Massachusetts	N/A	$0
Michigan	N/A	$0
Minnesota	N/A	$0
Mississippi	N/A	$0
Missouri	N/A	$0
Montana	N/A	$0
Nebraska	N/A	$0
Nevada	N/A	$0
New Hampshire	N/A	$0
New Jersey	N/A	$0
New Mexico	N/A	$0
New York	N/A	$0
North Carolina	N/A	$0
North Dakota	N/A	$0
Ohio	N/A	$0
Oklahoma	N/A	$0
Oregon	N/A	$0
Pennsylvania	N/A	$0
Puerto Rico	N/A	$0
Rhode Island	N/A	$0
South Carolina	N/A	$0
South Dakota	N/A	$0
Tennessee	N/A	$0
Texas	N/A	$0
Utah	N/A	$0
Vermont	N/A	$0
Virgin Islands	N/A	$0
Virginia	N/A	$0
Washington	N/A	$0
West Pac	N/A	$0
West Virginia	N/A	$0
Wisconsin	N/A	$0
Wyoming	N/A	$0
STATE TOTALS		$0
NATIONAL OFFICE RESERVE		$243,016,441
TOTAL		$243,016,441

** Includes FY 2005 Carryover and Rescission

RURAL HOUSING SERVICE
ALLOCATION IN THOUSANDS
SECTION 504 DIRECT RURAL HOUSING LOANS

	STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2006 ALLOCATION
1	ALABAMA	0.02914691	$879
2	ARIZONA	0.02165916	$653
3	ARKANSAS	0.02301181	$694
4	CALIFORNIA	0.05356026	$1,615
5	COLORADO	0.01244796	$332
6	CONNECTICUT	0.00301503	$91
7	DELAWARE	0.00260858	$88
9	FLORIDA	0.02862195	$863
10	GEORGIA	0.03870552	$1,167
12	IDAHO	0.00926157	$279
13	ILLINOIS	0.02289193	$690
15	INDIANA	0.02163577	$653
16	IOWA	0.01497537	$452
18	KANSAS	0.01252499	$378
20	KENTUCKY	0.02699175	$814
22	LOUISIANA	0.02658801	$802
23	MAINE	0.01004646	$303
24	MARYLAND	0.00809012	$244
25	MASSACHUSETTS	0.00467784	$174
26	MICHIGAN	0.03036170	$916
27	MINNESOTA	0.02241926	$676
28	MISSISSIPPI	0.02944306	$888
29	MISSOURI	0.02649320	$799
31	MONTANA	0.00748030	$226
32	NEBRASKA	0.00889870	$268
33	NEVADA	0.00389431	$117
34	NEW HAMPSHIRE	0.00533998	$161
35	NEW JERSY	0.00402807	$152
36	NEW MEXICO	0.01723147	$520
37	NEW YORK	0.02829025	$853
38	NORTH CAROLINA	0.04993409	$1,506
40	NORTH DAKOTA	0.00445144	$134
41	OHIO	0.03025666	$913
42	OKLAHOMA	0.02084848	$629
43	OREGON	0.01749746	$528
44	PENNSYLVANIA	0.03508076	$1,058
45	RHODE ISLAND	0.00061002	$87
46	SOUTH CAROLINA	0.02721728	$821
47	SOUTH DAKOTA	0.00727218	$219
48	TENNESSEE	0.02874616	$867
49	TEXAS	0.08626859	$2,602
52	UTAH	0.00539086	$156
53	VERMONT	0.00496554	$150
54	VIRGINIA	0.02455868	$741
56	WASHINGTON	0.02114040	$638
57	WEST VIRGINIA	0.01464971	$442
58	WISCONSIN	0.02300364	$694
59	WYOMING	0.00397110	$120
60	ALASKA	0.00945161	$285
61	HAWAII	0.00914234	$276
62	W PAC ISLANDS	0.00407807	$500
63	PUERTO RICO	0.01361295	$739
64	VIRGIN ISLANDS	0.00348170	$100
	STATE TOTALS		$31,533
	100 UNDERSERVED COUNTIES/COLONIAS		$1,733
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK		$652
	GENERAL RESERVE		$733
	TOTAL		$34,652

RURAL HOUSING SERVICE
ALLOCATION IN THOUSANDS
SECTION 504 DIRECT RURAL HOUSING GRANTS

	STATE	STATE BASIC FORMULA FACTOR	TOTAL FY 2006 ALLOCATION
1	ALABAMA	0.02895129	$710
2	ARIZONA	0.01822198	$447
3	ARKANSAS	0.02307817	$566
4	CALIFORNIA	0.04712512	$1,155
5	COLORADO	0.01159403	$241
6	CONNECTICUT	0.00371268	$93
7	DELAWARE	0.00293163	$100
9	FLORIDA	0.03041312	$746
10	GEORGIA	0.03661908	$898
12	IDAHO	0.00852842	$209
13	ILLINOIS	0.02641754	$648
15	INDIANA	0.02405959	$590
16	IOWA	0.01786210	$438
18	KANSAS	0.01364909	$335
20	KENTUCKY	0.02688977	$659
22	LOUISIANA	0.02413924	$592
23	MAINE	0.01074827	$264
24	MARYLAND	0.00927164	$227
25	MASSACHUSETTS	0.00548024	$171
26	MICHIGAN	0.03302491	$810
27	MINNESOTA	0.02348925	$576
28	MISSISSIPPI	0.02699213	$662
29	MISSOURI	0.02801252	$687
31	MONTANA	0.00736568	$177
32	NEBRASKA	0.00983363	$241
33	NEVADA	0.00359134	$100
34	NEW HAMPSHIRE	0.00589663	$145
35	NEW JERSY	0.00461712	$146
36	NEW MEXICO	0.01420178	$348
37	NEW YORK	0.03156987	$774
38	NORTH CAROLINA	0.05019393	$1,231
40	NORTH DAKOTA	0.00470192	$115
41	OHIO	0.03422496	$839
42	OKLAHOMA	0.02108316	$517
43	OREGON	0.01770850	$434
44	PENNSYLVANIA	0.04090487	$1,003
45	RHODE ISLAND	0.00074832	$100
46	SOUTH CAROLINA	0.02591134	$635
47	SOUTH DAKOTA	0.00723669	$177
48	TENNESSEE	0.02972644	$729
49	TEXAS	0.07876808	$1,931
52	UTAH	0.00493463	$118
53	VERMONT	0.00527848	$129
54	VIRGINIA	0.02623675	$643
56	WASHINGTON	0.01980392	$486
57	WEST VIRGINIA	0.01559911	$382
58	WISCONSIN	0.02514997	$617
59	WYOMING	0.00385395	$94
60	ALASKA	0.00683910	$167
61	HAWAII	0.00731435	$179
62	W PAC ISLANDS	0.00280568	$500
63	PUERTO RICO	0.01023070	$463
64	VIRGIN ISLANDS	0.00243791	$100
	STATE TOTALS		$26,400
	100 UNDERSERVED COUNTIES/COLONIAS		$1,480
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK		$594
	GENERAL RESERVE		$1,650
	TOTAL		$30,124

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2006

Announcement Type: Initial Notice inviting applications from qualified applicants for Fiscal Year 2006.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.405 and 10.427.

SUMMARY: This NOFA announces the timeframe to submit applications for section 514 Farm Labor Housing (FLH) loans and section 516 FLH grants for the construction of new off-farm FLH units and related facilities for domestic farm laborers. The intended purpose of these loans and grants is to increase the number of available housing units for domestic farm laborers. Applications may also include requests for section 521 rental assistance (RA) and operating assistance for migrant units. This document describes the method used to distribute funds, the application process, and submission requirements.

DATES: The deadline for receipt of all applications in response to this NOFA is 5 p.m., local time for each Rural Development State Office on May 19, 2006. The application closing deadline is firm as to date and hour. The Agency will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Henry Searcy, Senior Loan Specialist, Multi-Family Housing Processing Division—STOP 0781 (Room 1263–S), U.S. Department of Agriculture—Rural Housing Service, 1400 Independence Ave. SW., Washington, DC 20250–0781, by telephone at (202) 720–1627 (This is not a toll free number.), or via email at *Henry.Searcy@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0045.

Overview

The FLH program is authorized by the Housing Act of 1949: Section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (RA) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide Rural Housing Service (RHS) the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes and agencies or political subdivisions of State or local government. In addition, loans may be made to limited partnerships in which the general partner is a nonprofit entity.

Program Administration

I. Funding Opportunities Description

The Agency's FLH program is authorized by Title V of the Housing Act of 1949: Section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (RA and operating assistance) are available through section 521 (42 U.S.C. 1490a). Agency regulations for the Off-FLH program are published at 7 CFR part 3560, subpart L. Eligibility for section 516 off-farm FLH grants is limited to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, and public agencies (such as housing authorities). Eligibility for section 514 off-farm FLH loans includes each of the aforementioned entities and also includes limited partnerships which have a nonprofit entity as their sole general partner.

Housing that is constructed with these loans and grants must meet the Agency design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, off-farm FLH must be managed in accordance with the program's management regulation, 7 CFR part 3560. Tenant eligibility is limited to persons who meet the definition of a "domestic farm laborer", a "retired domestic farm laborer," or a "disabled domestic farm laborer," as these terms are defined in 7 CFR 3560.11. A domestic farm labor is defined as "[a] person who, * * *, receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person." Farmworkers who are admitted to this country on a temporary basis under the Temporary Agricultural Workers (H–2A Visa) program are not eligible to occupy section 514/516 off-farm FLH.

The term "farm labor," as used in the definition of domestic farm laborer, includes "[services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, * * *, any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage]." In addition, off-farm FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless at which farm they work.

Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under section 514 or section 516(i) of the Housing Act of 1949 (U.S.C. 1486(i)) that serve migrant farmworkers. To be eligible for the operating assistance, projects must be off-farm FLH projects financed under section 514 or section 516 with units that are for migrant farmworkers (housing units for year-round farmworker households are ineligible) and must otherwise meet the requirements of 7 CFR 3560.574. "Migrants or migrant agricultural laborer" is defined in 7 CFR 3560.11 as "[a] person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence." Owners of eligible projects may choose tenant-specific RA or operating assistance, or a combination of both; however, any tenant or unit assisted with operating assistance may not also receive RA.

II. Award Information

Applications for Fiscal Year (FY) 2006 will only be accepted through the date and time listed in this NOFA.

Because RHS has the ability to adjust loan and grant levels, final loan and grant levels will fluctuate. The estimated funds available for FY 2006

for off-farm housing are: Section 514, $31,937,082 and section 516, $10,491,000.

Individual requests may not exceed $3 million (total loan and grant). If RA is available, it will be held in the National Office and will be awarded based on each project's financial structure and need. Section 516 off-farm FLH grants may not exceed 90 percent of the total development cost of the housing. Applications that require leveraged funding must have firm commitments in place for all of the leveraged funding within 1 year of the issuance of a "Notice of Preapplication Review Action," Form AD–622. In order to be eligible for leveraged funding selection points, the commitment for leveraged funds must be submitted with the initial preapplication.

III. Eligibility Information

Applicant Eligibility

(1) *To be eligible to receive a section 516 grant for off-farm FLH,* the applicant must be a broad-based nonprofit organization, a nonprofit organization of farm workers, a federally recognized Indian tribe, an agency or political subdivision of a State or local government, or a public agency (such as a housing authority).

(2) *To be eligible to receive a section 514 loan for off-farm FLH,* the applicant must be a broad-based nonprofit organization, a nonprofit organization of farm workers, a federally recognized Indian tribe, an agency or political subdivision of a State or local government, a public agency (such as a housing authority), or a limited partnership which has a nonprofit entity as its sole general partner and:

(a) Be unable to provide the necessary housing from its own resources; and

(b) Except for State or local public agencies and Indian tribes, be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents.

(3) Broad-based nonprofit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

Cost Sharing or Matching

Section 516 grants for off-farm FLH may not exceed the lesser of 90 percent of the total development cost or the amount provided in 7 CFR 3560.562(c)(2).

Other Administrative Requirements

The following policies and regulations apply to loans and grants made in response to this NOFA:

(1) The policies and regulations contained in 7 CFR part 1901, subpart E regarding equal opportunity requirements;

(2) The requirements of 7 CFR part 3015, and 7 CFR part 3016 or 7 CFR part 3019 (as applicable), which establish the uniform administrative requirements for grants and cooperative agreements to State and local governments and to non-profit organizations;

(3) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties;

(4) The policies and regulations contained in 7 CFR part 1940, subpart G regarding environmental assessments;

(5) The policies and regulations contained in 7 CFR part 3560, subpart L regarding the loan and grant authorities of the off-farm FLH program;

(6) The policies and regulations contained in 7 CFR part 1924, subpart A regarding planning and construction;

(7) The policies and regulations contained in 7 CFR part 1924, subpart C regarding the planning and performing of site development work; and

(8) All other policies and regulations contained in 7 CFR part 3560 regarding the section 514/516 off-farm FLH program.

IV. Application and Submission Information

The application process will be in two phases: the initial preapplication (or proposal) and the submission of a formal application. Only those proposals that are selected for funding will be invited to submit formal applications. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded preapplication may be selected.

All preapplications for sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this Notice. Incomplete preapplications will not be reviewed and will be returned to the applicant. No preapplication will be accepted after 5 p.m., local time for each Rural Development State Office on May 19, 2006 unless date and time is extended by another Notice published in the **Federal Register**.

If a preapplication is accepted for further processing, the applicant will be expected to submit a complete, formal application prior to the obligation of Agency funds.

Preapplication Requirements

The preapplication must contain the following:

(1) A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan and grant requested.

(g) For grants, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405).

(2) A narrative describing the applicant's ability to meet the eligibility requirements stated in this Notice.

(3) Application for Federal Assistance (Standard Form 424) which can be found online at *http://www.whitehouse.gov/omb/grants/sf424.pdf.*

(4) A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts.

(5) Evidence that the applicant is unable to obtain credit from other sources. Letters from credit institutions who normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided. (Note: Not required from State or local public agencies or Indian tribes.)

(6) A statement concerning the need for a labor housing grant. The statement should include preliminary estimates of the rents required with and without a grant.

(7) A statement of the applicant's experience in operating labor housing or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience (i.e., obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental

management and will be available on a continuous basis).

(8) A brief statement explaining the applicant's proposed method of operation and management (i.e., on-site manager, contracting for management services, etc.). As stated in this Notice:

(a) The housing must be managed in accordance with the program's management regulation, 7 CFR part 3560 and

(b) Tenancy is limited to "domestic farm laborers," "retired dometic farm laborers," and "disabled domestic farm laborers" as defined in this Notice.

(9) Applicants must provide:

(a) A copy of, or an accurate citation to, the special provisions of State law under which they are organized, a copy of the applicant's charter, their Articles of Incorporation, and their By-laws;

(b) The names, occupations, and addresses of the applicant's members, directors, and officers; and

(c) If a member or subsidiary of another organization, the organization's name, address, and nature of business.

(10) A preliminary survey to identify the supply and demand for labor housing in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project.

Documentation must be provided to *justify a need within the intended market area for housing for "domestic farm laborers", as defined in this Notice.* The preliminary survey should address or include the following items:

(a) The annual income level of farmworker families in the area and the probable income of the farm workers who are apt to occupy the proposed housing;

(b) A realistic estimate of the number of farm workers who are home-based in the area and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (i.e., single individuals as opposed to families);

(c) General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.);

(d) The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (i.e., will they rent to large families, do they require annual leases, etc.);

(e) The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers;

(f) A description of the units proposed, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility, estimated development timeline, estimated total development cost, and applicant contribution; and

(g) The applicant must also identify all other sources of funds, including the dollar amount, source, and commitment status. (Note: A section 516 grant may not exceed 90 percent of the total development cost of the housing.)

(11) A completed Form RD 1940–20, "Request for Environmental Information," and a description of anticipated environmental issues or concerns. The form can be found online at *http://www.rurdev.usda.gov/regs/forms/1940-20.pdf.*

(12) A prepared HUD 935.2, "Affirmative Fair Housing Marketing Plan." The plan will reflect that occupancy is open to all qualified "domestic farm laborers," regardless of which farming operation they work at and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units. The form can be found online at *http://www.hudclips.org/sub_nonhud/html/pdfforms/935-2.pdf.*

(13) Evidence of site control such as an option or sales contract. In addition, a map and description of the proposed site, including the availability of water, sewer, and utilities and the proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

(14) Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials. The housing must meet the Agency's design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards.

(15) A Supportive Services Plan describing services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farm workers and their families. Letters of intent from service providers are acceptable documentation at the preapplication stage.

(16) A proposed operating budget utilizing Form RD 3560–7, "Multiple Family Housing Project Budget/Utility Allowance." The form can be found online at *http://www.rurdev.usda.gov/regs/forms/3560-07.pdf.*

(17) An estimate of development cost utilizing Form RD 1924–13, "Estimate and Certificate of Actual Cost." The form can be found online at *http://www.rurdev.usda.gov/regs/forms/1924-13.pdf.*

(18) Form RD 3560–30, "Certification of No Identity of Interest (IOI)" and Form RD 3560–31, "Identity of Interest Disclosure/Qualification Certification." These forms can be found online at *http://www.rurdev.usda.gov/regs/formstoc.html.*

(19) Form HUD 2530, "Previous Participation Certification." The form can be found online at *http://www.hudclips.org/sub_nonhud/html/pdfforms/2530.pdf.*

(20) If requesting RA or Operating Assistance, Form RD 3560–25, "Initial Request for Rental Assistance or Operating Assistance." The form can be found online at *http://www.rurdev.usda.gov/regs/forms/3560-25.pdf.*

(21) A Sources and Uses Statement showing all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the Sources and Uses Statement.

(22) A separate one-page information sheet listing each of the "Application Scoring Criteria" contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria.

(23) Applicants are encouraged, but not required, to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

Funding Restrictions

Individual requests may not exceed $3 million (total loan and grant). Grants may not exceed 90 percent of the total development cost of the housing.

Intergovernmental Review

The construction of new section 516 off-farm FLH is subject to the Intergovernmental Review provisions of 7 CFR part 3015, subpart V which requires intergovernmental consultation with State and local officials.

Submission Address

Applicants wishing to apply for assistance must contact the Rural

Development State Office serving the place in which they desire to submit an application for off-farm labor housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Center 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Debbie Andrys.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8706, TDD (602) 280–8770, Johnna Vargas.

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3063, Clinton King.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5830, TDD (530) 792–5848, Stephen Nnodim.

Colorado State Office, 655 Parfet Street, Room El00, Lakewood, CO 80215, (720) 544–2923, TDD (800)659–2656, Mary Summerfield.

Connecticut
Served by Massachusetts State Office.

Delaware State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585, Pat Baker.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Hawaii State Office, (Services all Hawaii, American Samoa, Guam and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 933–8321, Jack Mahan.

Illinois State Office, 2118 W. Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young.

Iowa State Office, 210 Walnut Street Room 873, DesMoines, IA 50309, (515) 284–4685, TDD (515) 284–4858, Julie Sleeper.

Kansas State Office, 1303 SW., First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland Served by Delaware State Office.

Massachusetts State Office, 451 West Street, Amherst, MA 01002, (413) 253–4315, TDD (413) 253–4590, Paul Geoffroy.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Ghulam R. Sumbal.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101, (651) 602–7782, TDD (651) 602–7826, Peter Lundquist.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9305, TDD (573) 876–9480, Colleen James.

Montana State Office, 900 Technology Blvd., Suite B, Bozeman, MT 59715, (406) 585–2565, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5594, TDD (402) 437–5093, Phil Willnerd.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 25), TDD (775) 885–0633, Angilla Denton.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler.

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856)787–7784, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless.

North Carolina State Office, 4405 Bland Road, Suite 2120, Raleigh, NC 271209, (919) 873–2066, TDD (919) 873–2003, Bill Hobbs.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Melodie Taylor-Ward.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654. (405) 742–1070, TDD (405) 742–1007, Ivan Graves.

Oregon State Office, 101 SW., Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Margo Donelin.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha E. Hanson.

Puerto Rico State Office, IBM Building, 654 Munoz Rivera Ave., Suite 601, San Juan, PR 00918, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon.

Rhode Island Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.

Tennessee State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Donald Harris.

Texas State Office, 101 South Main St., Suite 102, Temple, TX 76501, (254) 742–9758, TDD (254) 742–9712, Julie Hayes.

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4325,TDD (801) 524–3309, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6021,TDD (802) 223–6365, Heidi Setien.

Virgin Islands, Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596,TDD (804) 287–1753, CJ Michels.

Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730,TDD (360) 704–7760, Robert Lund.

Western Pacific Territories, Served by Hawaii State Office.West Virginia State Office,75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4872,TDD (304) 284–4836, David Cain.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7608 (ext. 7145),TDD (715) 345–7614, Peter Kohnen.

Wyoming State Office, P.O. Box 11005, Casper, WY 82602–6733, (307) 233–6715,TDD (307) 233–6733, Jack Hyde.

V. Application Review Information

All applications for sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this Notice. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 p.m., local time for each Rural Development State Office on May 19, 2006 unless date and time is extended by another Notice published in the **Federal Register**. The Rural Development State Office will base its determination of completeness of the

application and the eligibility of each applicant on the information provided in the application.

Selection Criteria

Section 514 loan funds and section 516 grant funds will be distributed to States based on a national competition, as follows:

(1) States will accept, review, and score requests in accordance with the Notice. The scoring factors are:

(a) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, section 8 or other non-RHS tenant subsidies, and state or Federal funds. A minimum of ten percent leveraged assistance is required to earn points; however, if the total percentage of leveraged assistance is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. To count as leveraged funds for purposes of the selection criteria, a commitment of funds must be provided with the preapplication. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0

Donated land in proposals with less than ten percent total leveraged assistance: 2.

(b) Percent of units for seasonal, temporary, migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more.)

(c) The selection criteria includes one optional criteria set by the National Office. The National Office initiative will be used in the selection criteria as follows: Up to 10 points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include, but are not limited to, transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant. (0 to 10 points)

(2) States will conduct the preliminary eligibility review, score the applications, and forward them to the National Office.

(3) The National Office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. A lottery in accordance with 7 CFR 3560.56(c)(2) will be used for applications with tied point scores when they all cannot be funded. If insufficient funds or RA remain for the next ranked proposal, that applicant will be given a chance to modify their application to bring it within remaining funding levels. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted.

Dated: March 8, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 06–2449 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for Fiscal Year 2006

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 515 Rural Rental Housing (RRH) loan funds, including applications for the nonprofit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs) and Rural Economic Area Partnership (REAP) zones. This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The deadline for receipt of all applications in response to this NOFA is 5 p.m., local time for each Rural Development State Office on May 19, 2006. The application closing deadline is firm as to date and hour. The Agency will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State Office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Debbie Andrys.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas.

Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3063, Greg Kemper.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5830, TDD (530) 792–5848, Stephen Nnodim.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585, Pat Baker.

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.
Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 933–8321, Jack Mahan.
Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, LaDonn McElligott.
Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young.
Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4685, TDD (515) 284–4858, Julie Sleeper.
Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins.
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.
Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.
Maryland, Served by Delaware State Office.
Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–4590, Donald Colburn.
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Julie Putnam.
Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7782, TDD (651) 602–7830, Peter Lundquist.
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.
Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Colleen James.
Montana State Office, 900 Technology Blvd. Suite B, Bozeman, MT 59715, (406) 585–2565, TDD (406) 585–2562, Deborah Chorlton.
Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5594, TDD (402) 437–5093, Phil Willnerd.
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 25), TDD (775) 885–0633, Angilla Denton.
New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler.
New Jersey State Office, 5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez.
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless.
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, Terry Strole.
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake.
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Melodie Taylor-Ward.
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan S. Graves.
Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3352, TDD (503) 414–3387, Margo Donelin.
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Martha Eberhart.
Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.
Rhode Island, Served by Massachusetts State Office.
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Don Harris.
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9758, TDD (254) 742–9712, Julie Hayes.
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4325, TDD (801) 524–3309, Janice Kocher.
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6021, TDD (802) 223–6365, Heidi Setien.
Virgin Islands, Served by Florida State Office.
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.
Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7760, Robert Lund.
Western Pacific Territories, Served by Hawaii State Office.
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4872, TDD (304) 284–4836, David Cain.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615 (ext. 151), TDD (715) 345–7614, Peter Kohnen.
Wyoming State Office, PO Box 11005, Casper, WY 82602, (307) 233–6715, TDD (307) 233–6733, Jack Hyde.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Barbara Chism, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC, 20250, telephone (202) 690–1436 (voice) (this is not a toll free number), (800) 877–8339 (TDD—Federal Information Relay Service), or via e-mail, *Barbara.Chism@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and, when available, may be requested with applications for such facilities.

B. Distribution Methodology

The total amount available for Fiscal Year (FY) 2006 for section 515 is $99,000,000, of which $25,740,000 is available for new construction as follows:

Section 515 new construction funds	$8,562,510
Set-aside for nonprofits	$8,910,000

Set-aside for Underserved Counties and Colonias	$4,950,000
Earmark for EZ, EC, and REAP Zones	$2,327,490
State Rental Assistance (RA) Designated reserve	$990,000

C. Section 515 New Construction Funds

For FY 2006, the Administrator has determined that it would not be practical to allocate funds to States because of funding limitations; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR 3560.56. The scoring factors are:

(a) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing, computed as a percentage of the RHS total development cost (TDC). Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be processed as follows: the proposal will be scored based on the requested funds, provided (1) the applicant includes evidence of a filed application for the funds; and (2) the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	0

(b) The units to be developed are in a colonia, tribal land, EZ, EC, or Rural Economic Area Partnership (REAP) community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. (20 points)

(c) Pursuant to 7 CFR 3560.56(c)(1)(iii), in states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, Community Development Block Grant (CDBG) funds, or Low-Income Housing Tax Credits (LIHTC)) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding such State resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the TDC. Native American Housing and Self Determination Act (NAHASDA) funds may be considered a State Resource if the Tribal Plan for NAHASDA funds contains provisions for partnering with RHS for multifamily housing. (National Office initiative)

(d) The loan request includes donated land meeting the provisions of 7 CFR 3560.56(c)(1)(iv). (5 points)

2. The National Office will rank all requests nationwide and distribute funds to States in rank order, within funding limits. If insufficient funds remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels. Point score ties will be handled in accordance with 7 CFR 3560.56(c)(2).

D. Applications That Do Not Require New Construction RA

For FY 2006, new construction RA will not be available, except if matched by State RA. Unused RA may be allocated from within the State jurisdiction to approved new construction projects. Therefore, the Agency is inviting applications to develop units in markets that do not require RA. The market study for proposals must clearly demonstrate a need and demand for the units by prospective tenants at income levels that can support the proposed rents without tenant subsidies. The proposed units must offer amenities that are typical for the market area at rents that are comparable to conventional rents in the market for similar units.

E. Set-Asides

Loan requests will be accepted for the following set-asides:

1. Nonprofit set-aside. An amount of $8,910,000 has been set aside for nonprofit applicants. All loan proposals must be in designated places in accordance with 7 CFR 3560.57. A State or jurisdiction may receive one proposal from this set-aside, which cannot exceed $1 million. A State could get additional funds from this set-aside if any funds remain after funding one proposal from each participating State. If there are insufficient funds to fund one loan request from each participating State, selection will be made by point score. If there are any funds remaining, they will be handled in accordance with 42 U.S.C. 1485(w)(3). Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

2. Underserved counties and colonias set-aside. An amount of $4,950,000 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

3. EZ, EC, and REAP Earmark. An amount of $2,327,490 has been set aside to develop units in an EZ, EC, or REAP zone. Loan requests that are eligible for this set-aside are also eligible for regular section 515 funds. If requests for this set-aside exceed available funds, selection will be made in accordance with 7 CFR 3560.56(c).

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more.

B. No State may receive more than $2.5 million, including set-aside funds.

III. Rental Assistance (RA)

RA will not be available from the National Office for use with section 515 Rural Rental Housing new construction loans, except if matched by State RA. Unused RA may be allocated from within the State jurisdiction to approved new construction projects.

IV. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR 3560.56, as well as comply with the provisions of Section V. of this Notice. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

V. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR 3560.56, as well as comply with the provisions of this Notice. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State Office serving the place in which they desire to submit an application for the following:

1. Application information; and
2. List of designated places for which applications for new section 515 facilities may be submitted.

VI. Areas of Special Emphasis or Consideration

A. The RHS encourages the use of funding from other sources in conjunction with Agency loans. This year there will be a National Office Initiative pursuant to 7 CFR 3560.56(c)(1)(iii), whereby preference points will be awarded to loan requests that meet the selection criteria as follows: In States where RHS has an on-going formal working relationship, agreement, or MOU with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or LIHTC) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the TDC. NAHASDA funds may be considered a State Resource if the Tribal Plan for NAHASDA funds contains provisions for partnering with RHS for multifamily housing.

B. $8,910,000 is available nationwide in a set-aside for eligible nonprofit organizations as defined in 42 U.S.C. 1485(w).

C. $4,950,000 is available nationwide in a set-aside for the 100 most Underserved Counties and Colonias.

D. $2,327,490 is available nationwide in an earmark for EZ, EC, and REAP zone.

E. $990,000 is available nationwide in a reserve for States with viable State RA programs. In order to participate, States are to submit specific written information about the State RA program, i.e., a memorandum of understanding, documentation from the provider, etc., to the National Office.

Dated: March 8, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 06–2450 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2006

Announcement Type: Initial Notice inviting applications from qualified applicants for Fiscal Year 2006.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.433.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists rental property owners and cooperative housing complexes in repairing and rehabilitating their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which require the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: The closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time for each Rural Development State Office on May 19, 2006. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0115.

Program Administration

I. Funding Opportunities Description

The funding instrument for the HPG Program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the Rural Development State Office to determine the allocation.

II. Award Information

For Fiscal Year 2006, $10,497,716 is available for the HPG Program. The total includes $597,716 in carryover funds. An earmark of $594,000 has been established for grants located in Empowerment Zones, Enterprise Communities, and REAP Zones and other funds will be distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds." Decisions on funding will be based on pre-applications.

III. Eligibility Information

7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds, and copies of the preapplication package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, Federally recognized Indian tribes, and consortia of eligible entities.

Federally recognized Indian tribes are exempt from the requirement to consult with local leaders, found in 7 CFR 1944.674, that mentions that the applicant announce the availability of

its statement of activities for review in a newspaper.

As part of the application, all applicants must also provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405).

IV. Application and Submission Information

Applicants wishing to apply for assistance must make its statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by RHS.

Applicants must also contact the Rural Development State Office serving the place in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, James B. Harris.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Debbie Andrys.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas.

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3258, TDD (501) 301–3063, Clinton King

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 934–4614 ext. 123, TDD (530) 792–5848, Linda Eveland.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office. Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585 Pat Baker.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Hawaii State Office, (Services all Hawaii, American Samoa, Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 933–8321, Jack Mahan.

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5628, TDD (208) 378–5644, LaDonn McElligott.

Illinois State Office,2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young.

Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Sue Wilhite.

Kansas State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Beth Moore.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street Suite 2, Amherst, MA 01002, (413) 253–4315, TDD (413) 253–4590, Paul Geoffroy.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Ghulam R. Simbal.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55125, (651) 602–7804, TDD (651) 602–7830, Thomas Osborne.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9303, TDD (573) 876–9480, Becky Eftink.

Montana State Office, 900 Technology Blvd, Suite B, Bozeman, MT 59771, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5035, TDD (402) 437–5093, Sharon Kluck.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 25), TDD (775) 885–0633, Angilla Denton.

New Hampshire State Office, Concord Center,Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler.

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez.

New York State Office, The Galleries of Syracuse 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6404, TDD (315) 477–6447, Tia Baker.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, William A. Hobbs.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2046, TDD (701) 530–2113, Barry Borstad.

Ohio State Office, Federal Building, Room 507, 200 North High Street,Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554,Melodie Taylor-Ward.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan Graves.

Oregon State Office, 101 SW. Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3351, TDD (503)414–3387, Diana Chappell.,

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha E. Hanson.

Puerto Rico State Office, IBM Building, Suite 601, Munoz Rivera Ave. #654, San Juan, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.

Rhode Island, Served by Massachusetts State Office.,

South Carolina State Office, Strom Thurmond Federal Building 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Larry Kennedy.,

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9758, TDD (254) 742–9712, Julie Hayes.

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4325, TDD (801) 524–3309, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6021, TDD (802) 223–6365, Heidi Setien.
Virgin Islands, Served by Florida State Office
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.
Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7742, Robert L. Lund.
Western Pacific Territories, Served by Hawaii State Office
West Virginia, Parkersburg West Virginia County Office, 91 Boyles Lane, Parkersburg, WV 26104, (304) 422–9070, TDD (304) 284–4836, Penny Thaxton.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7608 (ext.151), TDD (715) 345–7614, Peter Kohnen.
Wyoming State Office, PO Box 82601, Casper, WY 82602–5006, (307) 233–6715, TDD (307) 233–6733, Jack Hyde.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC, 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via email at, *Bonnie.Edwards@wdc.usda.gov.*

V. Application Review Information

All applications for Section 533 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office.

All applicants will file an original and two copies of Standard Form (SF) 424, "Application For Federal Assistance," and supporting information with the appropriate Rural Development State Office. A pre-application package, including SF–424, is available in any Rural Development State Office. All preapplications shall be accompanied by the following information which Rural Development will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the preapplication under the project selection criteria of § 1944.679 of 7 CFR part 1944, subpart N.

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program;

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(3) A description of the process for identifying potential environmental impacts in accordance with § 1944.672 of 7 CFR part 1944, subpart N, and the provisions for compliance with Stipulation I, A–G of the Programmatic Memorandum of Agreement, also known as PMOA, (RD Instruction 2000–FF, available in any Rural Development State Office) in accordance with § 1944.673(b) of 7 CFR part 1944, subpart N;

(4) The development standard(s) the applicant will use for the housing preservation work; and, if not the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(5) The time schedule for completing the program;

(6) The staffing required to complete the program;

(7) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(8) The geographical area(s) to be served by the HPG program;

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.;

(10) A copy of an indirect cost proposal as required in 7 CFR parts 3015, 3016, and 3019, when the applicant has another source of federal funding in addition to the Rural Development HPG program;

(11) A brief description of the accounting system to be used;

(12) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with § 1944.683(b) of 7 CFR part 1944, subpart N and the monitoring plan for rental properties and cooperatives (when applicable) according to § 1944.689 of 7 CFR part 1944, subpart N;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(14) The use of program income, if any, and the tracking system used for monitoring same;

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status;

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in § 1944.671(b) of 7 CFR part 1944, subpart N.

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of "organization" in § 1944.656 of 7 CFR part 1944, subpart N will also be included.

(d) For a private nonprofit entity, the most recent audited statement and a current financial statement dated and

signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) Applicant must submit an original and one copy of Form RD 1940–20 prepared in accordance with Exhibit F–1 of RD Instruction 1944–N (available in any Rural Development State Office).

(g) Applicant must also submit a description of its process for:

(1) Identifying and rehabilitating properties listed on or eligible for listing on the National Register of Historic Places;

(2) Identifying properties that are located in a floodplain or wetland;

(3) Identifying properties located within the Coastal Barrier Resources System; and

(4) Coordinating with other public and private organizations and programs that provide assistance in the rehabilitation of historic properties (Stipulation I, D, of the PMOA, RD Instruction 2000–FF, available in any Rural Development State Office).

(h) The applicant must also submit evidence of the State Historic Preservation Office's, also known as SHPO, concurrence in the proposal, or in the event of nonconcurrence, a copy of SHPO's comments together with evidence that the applicant has sought the Advisory Council on Historic Preservation's advice as to how the disagreement might be resolved, and a copy of any advice provided by the Council.

(i) The applicant must submit written statements and related correspondence reflecting compliance with § 1944.674 (a) and (c) of 7 CFR part 1944, subpart N regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(j) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to § 1944.674(b) of 7 CFR part 1944, subpart N. The application must contain a description of how the comments (if any were received) were addressed.

(k) The applicant must submit an original and one copy of Form RD 400–1, "Equal Opportunity Agreement," and Form 400–4, "Assurance Agreement," in accordance with § 1944.676 of 7 CFR part 1944, subpart N.

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

Selection Criteria

The Rural Development State Offices will utilize the following project selection criteria for applicants in accordance with § 1944.679 of 7 CFR part 1944, subpart N:

(a) Providing a financially feasible program of housing preservation assistance. "Financially feasible" is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serving eligible rural areas with a concentration of substandard housing for households with very low- and low-income.

(c) Being an eligible applicant as defined in § 1944.658 of 7 CFR part 1944, subpart N.

(d) Meeting the requirements of consultation and public comment in accordance with § 1944.674 of 7 CFR part 1944, subpart N.

(e) Submitting a complete preapplication as outlined in § 1944.676 of 7 CFR part 1944, subpart N.

For applicants meeting all of the requirements listed above, the Rural Development State Offices will use weighted criteria as selection for the grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the state.

(a) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(1) More than 80%: 20 points.

(2) 61% to 80%: 15 points.

(3) 41% to 60%: 10 points.

(4) 20% to 40%: 5 points.

(5) Less than 20%: 0 points.

(b) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(1) 50% or less: 20 points.

(2) 51% to 65%: 15 points.

(3) 66% to 80%: 10 points.

(4) 81% to 95%: 5 points.

(5) 96% to 100%: 0 points.

(c) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(1) The organization or a member of its staff has 2 or more years experience successfully managing and operating a rehabilitation or weatherization type program, including Rural Development's HPG Program: 10 points.

(2) The organization or a member of its staff has 2 or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(3) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(d) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in § 1944.656 of 7 CFR part 1944, subpart N: 10 points.

(e) The program will use less than 20 percent of HPG funds for administration purposes:

(1) More than 20%: Not eligible.

(2) 20%: 0 points.

(3) 19%: 1 point.

(4) 18%: 2 points.

(5) 17%: 3 points.

(6) 16%: 4 points.

(7) 15% or less: 5 points.

(f) The proposed program contains a component for alleviating overcrowding as defined in § 1944.656 of 7 CFR part 1944, subpart N: 5 points.

In the event more than one preapplication receives the same amount of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points. Further, in the event that preapplications are still tied, then those pre-applications still tied will be ranked based on the percentage for HPG fund

use (low to high). Further, for applications where assistance to rental properties or cooperatives is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of 5 years is required). For this part, ranking will be based from most to least number of years. Finally, if there is still a tie, then a lottery system will be used.

Dated: March 8, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 06–2451 Filed 3–17–06; 8:45 am]

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Federal Register

Monday,
March 20, 2006

Part III

Department of Agriculture

Department of Housing and Urban Development

USDA Voucher Program; Notice

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5021–N–01]

USDA Voucher Program

AGENCY: Office of Housing and Community Facilities Programs, USDA; Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice informs the public that the United States Department of Agriculture (USDA) is establishing a demonstration USDA Voucher Program, as authorized under section 542 of the Housing Act of 1949 (without regard to section 542(b)), to be administered by the United States Department of Housing and Urban Development (HUD), pursuant to an Inter Agency Agreement (IAA) between the two Departments, executed on March 1, 2006. This notice informs the public that USDA, acting under the IAA with HUD, shall make up to $16 million available for this purpose, as appropriated under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006. The notice also sets forth the policies and procedures for use of these vouchers.

DATES: *Effective Date:* March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Laurence Anderson, Acting Deputy Administrator, Multi-family Housing, Rural Development, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC, 20250 or David A. Vargas, Director, Office of Housing Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4228, Washington, DC 20410–5000. Telephone number (202) 708–2815 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97, approved November 10, 2005) (FY2006 Appropriations Act), appropriates approximately $16 million to the USDA for the USDA Voucher Program as authorized under section 542 of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) (without regard to section 542(b)).

The FY 2006 Appropriations Act provides that the Secretary of the Department of Agriculture shall carry out a USDA voucher program as follows:

> That such vouchers shall be available to any low-income family (including those not receiving rental assistance) residing in a property financed with a section 515 loan which has been prepaid after September 30, 2005: Provided further, [t]hat the amount of the voucher shall be the difference between comparable market rent for a section 515 unit and the tenant paid rent for such unit: Provided further, [t]hat funds made available for such vouchers shall be subject to the availability of annual appropriations: Provided further, [t]hat the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable for section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (including the ability to pay administrative costs related to delivery of the voucher funds).

In order to expedite the provision of voucher assistance to eligible families impacted by an owner's decision to prepay the section 515 loan and convert the property to market-rate housing, USDA and HUD entered into an IAA whereby HUD will: (1) Administer, on behalf of the USDA, all or a portion of the USDA voucher assistance appropriated for this purpose, (2) provide USDA voucher assistance to public housing agencies (PHAs), and (3) ensure that USDA voucher assistance is administered to the maximum extent practicable in accordance with HUD's Housing Choice Voucher Program regulations at 24 CFR part 982 and guidance, and consistent with the formula established by the FY2006 Appropriations Act.

This notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a section 515 loan after September 30, 2005. Unless expressly stated in this notice or in subsequent directives, the requirements of the regulations at 24 CFR part 982 for the Housing Choice Voucher Program are applicable to the USDA vouchers provided under this notice. USDA vouchers authorized by the FY 2006 Appropriations Act and section 542 are exclusively tenant-based rental assistance. Consequently, the regulations at 24 CFR part 983 and all other directives pertaining to the project-based voucher program do not apply, nor do the homeownership voucher regulations at 24 CFR 982.625 through 982.643.

II. USDA Voucher Program Procedures

This section sets forth the design features of the USDA Voucher Program, including the eligibility of families, the inspection of the units, and the calculation of the subsidy amount.

USDA vouchers under this notice are administered in accordance with the Housing Choice Voucher Program regulations set forth at 24 CFR part 982 unless otherwise noted by this notice or subsequent program requirements and guidance. In the Housing Choice Voucher Program, HUD pays monthly rental subsidies so eligible families can afford decent, safe, and sanitary housing. The program is generally administered by state or local governmental entities called Public Housing Agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.

The basic structure of the USDA voucher program is the same as the Housing Choice Voucher Program. Families select and lease units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rental subsidy payments (housing assistance payments) directly to the owner on behalf of the family on a monthly basis. The family enters into a lease with the owner and pays the family rent to the owner in accordance with the lease. The housing assistance payments (HAP) contract between the PHA and the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the HAP contract with the owner terminates. Unless expressly noted below or in subsequent directives, all regulatory requirements, including compliance with the Fair Housing Act and other civil rights related requirements, and directives regarding the housing choice voucher tenant-based program are applicable to the USDA vouchers. The PHA's local discretionary policies adopted in the PHA administrative plan apply to USDA vouchers administered by the PHA, unless such local policy conflicts with the requirements of the USDA voucher program outlined below. The USDA voucher funding remains separate and distinct from the PHA's regular voucher program in terms of the source and use of the funding. The PHA may only provide USDA voucher assistance to eligible low-income families that were residing in section 515 properties on the date of the owner's prepayment of the loan to the extent that the PHA has funds available. The PHA may not use funds from the USDA voucher program

to assist families applying under its regular voucher program. Furthermore, PHAs may not use HUD's regular voucher funding to assist families applying to USDA's voucher program. The PHA is required to maintain records that allow for the easy identification of families receiving USDA vouchers. The PHA must report monthly leasing and expenditures for such families separately, as will be required under the Voucher Management System (VMS).

1. Family Eligibility

In order to be eligible for a USDA voucher under this notice, a family must be residing in the section 515 project on the date of the prepayment of the section 515 loan. Furthermore, the date of the prepayment must be after September 30, 2005, and the voucher funds obligated to the family before October 1, 2006. USDA will determine if the family is a low-income family on the date of the prepayment and, if the family wants to participate in the USDA voucher program, USDA will provide such determination to HUD. In turn, HUD will provide this information to the PHA that will administer the USDA vouchers. A low-income family is a family whose annual income does not exceed 80 percent of the median income for the area. If USDA makes a determination that the tenant is ineligible based on income, USDA will provide the administrative appeal rights.

A family currently assisted under a Section 8 project-based contract on the date of the section 515 loan prepayment also qualifies for an enhanced voucher under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) on the date that the owner opts-out of or does not renew the section 8 project-based contract. If the Section 8 project-based contract ends on the same day as the date of the prepayment, a family receiving Section 8 project-based assistance will inform USDA if the family chooses to either receive an enhanced voucher under section 8(t) or a USDA voucher.

A family that is already receiving enhanced voucher or regular voucher assistance on the date of the section 515 loan prepayment (for example, a family previously assisted under a Section 8 project-based contract where the contract expired and the owner chose not to renew prior to the loan prepayment) may continue to receive enhanced or regular voucher assistance or may choose to be converted to USDA voucher assistance under this notice.

Once the family has chosen to participate in the USDA voucher program instead of in the HUD voucher program, the family may not opt to switch forms of assistance.

Tenants receiving USDA rental assistance payments on the date of prepayment who decline a USDA voucher and move to another USDA financed multi-family housing complex may request that USDA transfer their rental assistance payments to the new project.

By agreeing to administer the USDA vouchers, the PHA is not relinquishing its authority to screen potentially eligible families or deny assistance on any grounds allowed under 24 CFR 982.552 and 982.553. The PHA must provide a family with an opportunity for an informal review if it denies the family admission to the USDA voucher program in accordance with 24 CFR 982.552 and 982.553. While the decision to deny assistance rests with the PHA, PHAs are encouraged to provide an otherwise eligible family with the opportunity to enter into a repayment agreement if the sole reason for the denial is that the family owes the PHA or another PHA rent or other amounts in connection with public housing or Section 8.

A family provided with a USDA voucher is not admitted to the PHA's regular voucher program and is not subject to local preferences or waiting list requirements. Families provided with USDA voucher assistance are not subject to the income targeting requirements of the tenant-based voucher program at 24 CFR 982.201(e)(2), and their admission is not counted in determining whether the PHA is complying with the income targeting requirements.

2. Initial Lease Term

The initial lease term must be for one year.

3. Inspection of Units and Unit Approval

Housing Choice Voucher Program housing quality standard (HQS) requirements apply to the USDA voucher program.

The PHA must inspect the unit and ensure that the unit meets the housing quality standards of the program at 24 CFR 982.401. Under no circumstances may the PHA make USDA voucher rental payments for any period of time prior to the date that the PHA physically inspects the unit and determines the unit meets the housing quality standards. The PHA may not make any exceptions to the normal housing quality standards used by the PHA and must conduct a complete HQS inspection of the unit.

Upon notification of a prepayment by USDA, HUD will determine if there is a PHA that has jurisdiction and that is willing and able to administer the USDA vouchers. HUD will provide the necessary funding to the selected PHA. Before approving a family's assisted tenancy or executing a Housing Assistance Payments Contract, the PHA must determine that the following conditions are met: (1) The unit is eligible; (2) the unit has been inspected by the PHA and passes the housing quality standards inspection; and (3) the lease includes the HUD tenancy addendum.

Once these conditions are met, the PHA may approve the unit for leasing. While the PHA must use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term (see 24 CFR 982.305(c)). If the HAP contract is executed during this period, the PHA will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. However, under no circumstances may the PHA make payments to the owner before the HAP contract is executed. Furthermore, any HAP contract executed after the 60-day period is void and the PHA may not pay any housing assistance payment to the owner for that period. If 60 days have passed from the beginning of the approved lease term, the PHA must re-approve the unit and the family and owner must enter into a new lease agreement in order for USDA voucher rental payments to commence on behalf of the family.

In establishing the effective date of the voucher HAP contracts, the PHA may not execute a housing voucher contract that is effective prior to the section 515 loan prepayment.

4. Subsidy Calculations for USDA Vouchers

The monthly housing assistance payment for the USDA voucher family for the initial year of assistance is the difference between comparable market rent for the family's former section 515 unit and the tenant contribution on the date of the prepayment. USDA will determine the voucher amount and provide the amount to HUD. The tenant can appeal USDA's determination of the voucher amount through USDA's administrative appeal process. Since the USDA voucher amount will be based on the comparable market rent, the voucher amount will never exceed the comparable market rent at the time of prepayment for the tenant's unit if the

tenant chooses to stay in-place. Also, in no event may the USDA voucher subsidy payment exceed the actual tenant lease rent. The tenant is required to notify USDA directly if the tenant's income increases above the income amount stated in the tenant's letter. USDA will then determine whether the tenant still qualifies as a low income tenant. If not, the tenant will no longer be eligible to participate in the program; however, the tenant will be given the opportunity to appeal this determination through USDA's appeal process. The PHA must terminate the family's participation in the USDA voucher program when notified to do so by USDA.

5. Mobility and Portability of USDA Vouchers

An eligible family who is issued a USDA voucher may elect to use the assistance in the same project or may choose to move from the property. Upon issuance of the voucher, the family also may move outside of the jurisdiction of the administering PHA. The provisions of 24 CFR 925.355 do not apply.

If the PHA with jurisdiction over the area to which the family wishes to move is unwilling to administer the USDA voucher, USDA will administer the assistance directly in the jurisdiction to which the family wishes to move.

The initial search period (i.e., term) of the voucher must be at least 60 calendar days. At its discretion, the PHA may grant a family one or more extensions of the initial search period of up to an additional 60 days. If the family needs and requests an extension of the initial USDA voucher search period as a reasonable accommodation to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher search period. The maximum voucher search period for any family participating in the USDA voucher program is 120 days. The PHA may not provide for the suspension of the initial or any extended search period of the voucher.

6. Term of Funding for USDA Vouchers

It is anticipated that this USDA voucher program will provide voucher assistance for one year, subject to the availability of appropriations to the USDA and transfer of such funding to HUD. At such time that the last USDA voucher Annual Contributions Contract (ACC) funding increment expires, HUD will recall any unspent USDA voucher funding from the PHA.

7. Applicability of Other Requirements

(a) In general, the following provisions of 24 CFR part 982 do not apply to assistance under the USDA voucher program:

(i) Any provisions concerning the reasonableness of the rent and PHA determination of the reasonableness of the rent.

(ii) Any provisions concerning the absorption of the family by the receiving PHA under the portability procedures.

(iii) Any provisions related to the term of the lease or a participant family's subsequent move with continued assistance.

(vi) Any provisions related to the verification and calculation of family income, the use of the payment standard, and the calculation of the housing assistance payment.

(b) The following provisions of 24 CFR part 982 do not apply to the USDA voucher program:

(i) § 982.1 Programs: purpose and structure.

(ii) § 982.101 Allocation of funding.

(iii) § 982.102 Allocation of budget authority for renewal of expiring consolidated ACC funding increments.

(iv) § 982.160 HUD determination to administer a local program.

(v) § 982.201 Eligibility and targeting.

(vi) § 982.202 How applicants are selected: General Requirements.

(vii) § 982.204 Waiting list: Administration of waiting list.

(viii) § 982.205 Waiting list: Different programs.

(ix) § 982.206 Waiting list: Opening and closing; public notice.

(x) § 982.207 Waiting list: Local preferences in admission to program.

(xi) § 982.303 Term of Voucher.

(xii) § 982.314 Move with continued tenant-based assistance.

(xiii) § 982.317 Lease-purchase agreements.

(xiv) 982.353 Where family can lease a unit with tenant-based assistance.

(xv) § 982.455 Automatic termination of HAP contract.

(xvi) Subpart K Rent and Housing Assistance Payment (with the exception of § 982.521).

(xvii) Subpart M and the regulations of §§ 982.601 through 982.643.

III. The Funding Process

This section sets forth the process for providing allocations of vouchers to PHAs to prevent the displacement of eligible low-income families who are impacted by an owner's decision to prepay the Section 515 loan and convert the property to market-rate housing. This section describes the funding process, the calculation of the initial budget authority, and the special fee and on-going administrative fee that will be provided to the PHA to cover the costs of administering the USDA voucher on behalf of the eligible families.

USDA is responsible for informing the tenants of the affected property of the prepayment and that the tenants may be eligible for USDA voucher assistance as a result.

The Director of the Office of Public Housing in the HUD field office will determine the appropriate PHA to administer the USDA voucher assistance and will invite the PHA to administer the USDA vouchers. If there is no PHA able or willing to administer the rural housing vouchers, USDA will administer the USDA voucher assistance directly. Upon PHA acceptance of the invitation, the HUD field office shall provide the PHA with the information on the project. The HUD field office will identify the PHA to the HUD Housing Voucher Finance Division. USDA shall work with both the HUD field office and the PHA to ensure that the PHA has timely access to the project, the families, and any relevant records that will assist the PHA in expediting the determination of family eligibility and the issuance of vouchers.

HUD Headquarters will calculate the budget authority as described below and assign the budget authority for the USDA voucher assistance to the Financial Management Center (FMC). The HUD field office shall transmit the approval letter to the PHA with a copy to the FMC. Upon receiving the approval letter from the HUD field office and the budget authority from HUD Headquarters, the FMC shall reserve and contract the USDA voucher funds based on the amount of the voucher provided the families by USDA, the ongoing and administrative fee determined by HUD, and the one-time special fee of $250 per unit. The FMC will then prepare and send ACC documents and the ACC transmittal letter to the PHA with a copy of the letter to the HUD field office.

The PHA will determine family eligibility (except for income eligibility) and issue vouchers. The family will decide whether to stay in place or move. Upon selecting a unit, the family must submit the request for tenancy approval to the PHA, at which time the PHA will inspect the unit. Once the unit is approved, the PHA shall execute the HAP contract with the owner.

After completing the initial lease-up of units, the PHA shall determine if the actual HAP costs will exceed the initial funding amount provided under the funding increment. On the rare occasion such an adjustment is necessary, the PHA must immediately contact the applicable HUD financial analyst at the FMC and provide a spreadsheet

demonstrating the actual costs of the vouchers.

IV. On-going Administrative Fee and Special Fee

HUD will provide the PHA with a fee for the on-going administration of the USDA voucher out of the USDA appropriation. The fee will be calculated in the same manner as the administrative fee for units the PHA receives under the regular housing voucher program. The administrative fee is calculated by multiplying the established per unit cost administrative fee for the PHA's housing voucher program by the number of families residing in the section 515 project on the effective date of the prepayment multiplied by 12 months.

In order to avoid or at least minimize any adverse impact of the section 515 loan prepayment on the affected families, the administering PHA must complete a number of tasks within a relatively short amount of time. These tasks include completing and submitting the funding application; determining each individual family's eligibility; and conducting housing quality standards inspections on potential units.

Depending on the number of residents affected by the action, PHAs may have to utilize additional staff, staff time, and PHA resources to promptly process and assist all eligible families. Given the time sensitive nature of the issuance of USDA vouchers and the leasing of units by eligible families, subject to the availability of funds, PHAs will receive a one-time special fee in recognition of the additional costs associated with the administration of these vouchers. The amount of the fee is $250 per unit for the total number of occupied units on the effective date of the prepayment.

V. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Under 24 CFR 50.19(b)(3), (5) and (11), activities assisted under this notice are categorically excluded from environmental review under the National Environmental Policy Act of 1969 and are not subject to compliance with related environmental laws and authorities.

Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: March 14, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Russell T. Davis,

Administrator, Housing and Community Facilities Programs, U.S. Department of Agriculture.

[FR Doc. 06–2660 Filed 3–15–06; 3:17 pm]

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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 MARCH 20, 2006

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Tuberculosis in cattle and bison; movement without individual tuberculin test; published 3-20-06

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LIST OF PUBLIC LAWS

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H.R. 32/P.L. 109–181

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks. (Mar. 16, 2006; 120 Stat. 285)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

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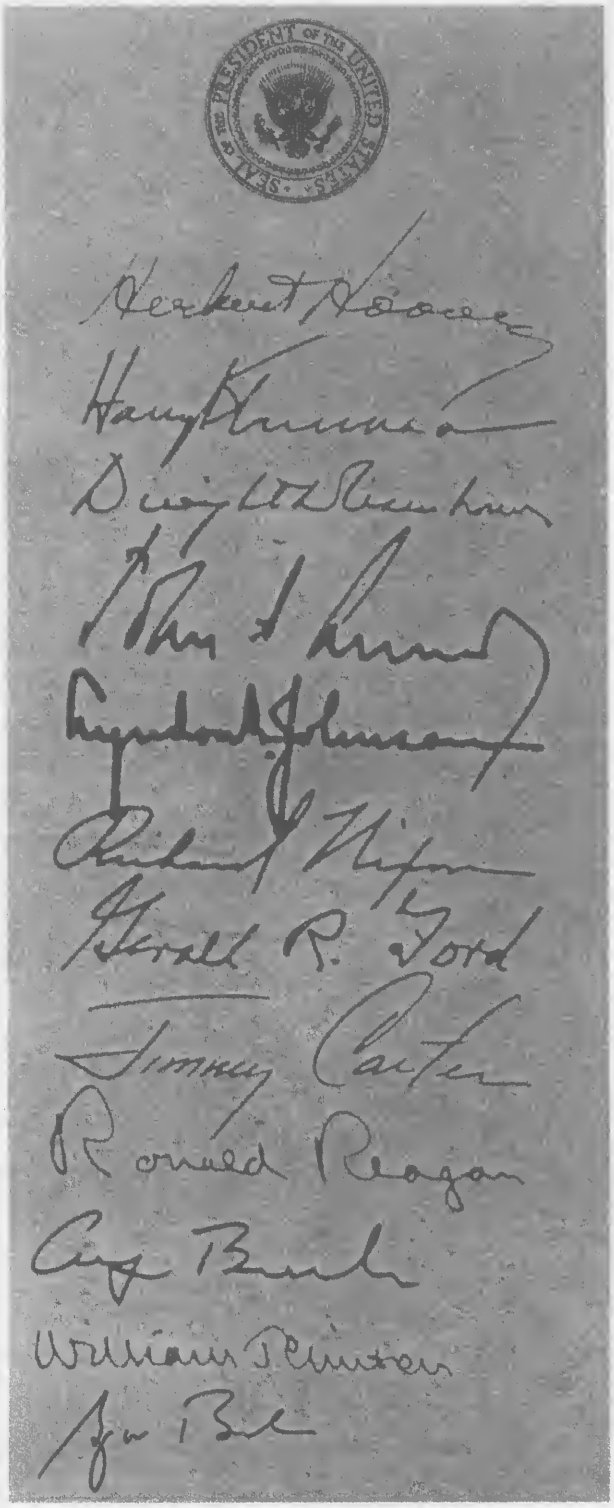

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